

1 petition on July 31, 2013.

2 **DISCUSSION**

3 Petitioner challenges his validation as a gang prison associate and placement
4 in the SHU. Petitioner claims that his right to procedural due process was violated
5 during the gang validation process. Respondent asserts that the petition must be
6 dismissed because Petitioner's claim is based solely on the California Supreme
7 Court case, People v. Ramirez, 25 Cal.3d 260, 269 (1979). (Mot. at 2.) As such,
8 Petitioner has failed to state a cognizable claim under 28 U.S.C. § 2254, and the
9 petition should be dismissed for lack of federal habeas jurisdiction. (Id. at 3.) Be
10 that as it may, the petition should be dismissed for the following reasons as well.

11 It is well established in this circuit that "habeas jurisdiction is absent, and a §
12 1983 action proper, where a successful challenge to a prison condition will not
13 necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859
14 (9th Cir. 2003). The preferred practice in the Ninth Circuit also has been that
15 challenges to conditions of confinement should be brought in a civil rights
16 complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action
17 is proper method of challenging conditions of confinement); Crawford v. Bell, 599
18 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on
19 basis that challenges to terms and conditions of confinement must be brought in civil
20 rights complaint). Here, Petitioner's claim that he was unconstitutionally confined
21 in the SHU based on an invalid gang validation, if successful, would not necessarily
22 shorten his sentence. Accordingly, the petition goes entirely to the conditions of his
23 confinement, and success in this action would not necessarily affect the duration of
24 his confinement.

25 Although a district court may construe a habeas petition by a prisoner
26 attacking the conditions of his confinement as a civil rights action under 42 U.S.C. §
27 1983, see Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the Court declines to
28 do so here. The difficulty with construing a habeas petition as a civil rights

1 complaint is that the two forms used by most prisoners request different information
2 and much of the information necessary for a civil rights complaint is not included in
3 the habeas petition filed here. Examples of the potential problems created by using
4 the habeas petition form rather than the civil rights complaint form include the
5 potential omission of intended defendants, potential failure to link each defendant to
6 the claims, and potential absence of an adequate prayer for relief.

7 Additionally, there is doubt whether the prisoner is willing to pay the \$350.00
8 civil action filing fee to pursue his claims. While a prisoner may think he has found
9 a loophole that allows him to avoid paying the \$350.00 filing fee by filing in habeas,
10 the loophole proves unhelpful because he ultimately cannot proceed in habeas and
11 will be charged the \$350.00 filing fee to proceed with actions challenging conditions
12 of confinement. It is not in the interest of judicial economy to allow prisoners to file
13 civil rights actions on habeas forms because virtually every such case, including this
14 one, will be defective at the outset and require additional court resources to deal with
15 the problems created by the different filing fees and the absence of information on
16 the habeas form.

17 CONCLUSION

18 For the foregoing reasons, Respondent's motion to dismiss is GRANTED.
19 This action for a writ of habeas corpus is DISMISSED without prejudice to
20 Petitioner filing a civil rights action under 42 U.S.C. § 1983, preferably using the
21 court's civil rights complaint form, after he has exhausted California's prison
22 administrative remedies. See 42 U.S.C. § 1997e(a).

23 The Clerk is instructed to include two copies of the prisoner civil rights
24 complaint form to Petitioner with a copy of this order.

25 This order terminates Docket No. 4.

26
27 DATED: 9/16/2014


28 EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RODOLFO MIRAMONTES,
Petitioner,

Case Number: CV13-03555 EJD
CERTIFICATE OF SERVICE

v.

G. D. LEWIS, Warden,
Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/17/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rodolfo Miramontes AH4941
Pelican Bay State Prison
P. O. Box 7500
Crescent City, CA 95532-7000

Dated: 9/17/2014

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk