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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

VICTORIA GARCIA,
Petitioner,
vs.
JO GENTRY, et al.,
Respondents.

Case No. 2:16-cv-00063-RFB-NJK

ORDER

Petitioner has filed an amended petition (ECF No. 5). The court has reviewed it pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner has not corrected the defects of the initial petition, and the court will dismiss this action.

In the amended petition, as in the initial petition, petitioner claims that respondents violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment when they validated her as a gang member. The court had directed petitioner to file an amended petition because she had alleged no facts in the initial petition that this gang-member validation had affected the duration of her imprisonment. The amended petition does not correct this defect. Petitioner again alleges facts that show only that the conditions of confinement have changed, but that the legality or duration of her confinement have not changed. “[I]f a state prisoner’s claim does not lie at ‘the core of habeas corpus,’ . . . it may not be brought in habeas corpus but must be brought, ‘if at all,’ under [42 U.S.C.] § 1983.” Nettles v. Grounds, 830 F.3d 922, 931 (9th Cir. 2016) (en banc) (quoting Preiser v. Rodriguez, 411 U.S. 475, 487 (1973), and Skinner v. Switzer, 562 U.S. 521, 535 n.13 (2011)), cert. denied 137 S. Ct. 645 (2017). The “core of habeas corpus” is relief that terminates custody, accelerates the future date of

1 release from custody, or reduces the level of custody, such as from incarceration to parole. Nettles, 830
2 F.3d at 930 (quoting Wilkinson v. Dotson, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)). The relief
3 that the court could grant petitioner would not affect the duration of her confinement. Therefore,
4 petitioner would need to seek that relief, if at all, through a civil rights action pursuant to 42 U.S.C.
5 § 1983.

6 Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the court
7 will not issue a certificate of appealability.

8 IT IS THEREFORE ORDERED that this action is **DISMISSED**. The clerk of the court shall
9 enter judgment accordingly and close this action.

10 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

11 DATED: January 9, 2018.

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16 RICHARD F. BOULWARE, II
17 United States District Judge
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