

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOSE RODRIGUEZ,

Case No. 3:14-cv-00482-MMD-VPC

Petitioner,

ORDER

v.

ISIDRO BACA.*et al.*,

Respondents.

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

Petitioner has filed a motion to proceed *in forma pauperis*. (Dkt. no. 1.) Based on the information regarding petitioner's financial status, the Court finds that the motion to proceed *in forma pauperis* should be granted.

This Court has conducted a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court must dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4 of the Rules Governing Section 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that “he is in custody in violation of the Constitution” 28 U.S.C. § 2254(a). “According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the legality or duration of confinement.” *Crawford v. Bell*, 599 F.2d 890,

1 891 (9th Cir. 1979) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484-86 (1973)). The
2 instant petition does not attack the legality or duration of petitioner’s confinement.
3 Rather, the petition challenges petitioner’s conditions of confinement while incarcerated
4 in prison. Petitioner alleges that prison officials have denied his request to be housed in
5 a minimum security facility. Petitioner claims that his present conditions of confinement
6 violate his due process and Eighth Amendment rights. Petitioner’s claims are not
7 appropriate for habeas corpus relief. Challenges to the conditions of confinement are
8 more appropriately raised in a civil rights action filed pursuant to 42 U.S.C. § 1983. *See*
9 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991); *Crawford v. Bell*, 599 F.2d at 891-92.
10 As such, this action is dismissed for failure to state a cognizable claim for federal
11 habeas corpus relief.

12 District courts are required to rule on the certificate of appealability in the order
13 disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a
14 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). In
15 order to proceed with any appeal, petitioner must receive a certificate of appealability.
16 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d
17 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52
18 (9th Cir. 2001). Generally, a petitioner must make “a substantial showing of the denial of
19 a constitutional right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2);
20 *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that
21 reasonable jurists would find the district court’s assessment of the constitutional claims
22 debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold
23 inquiry, the petitioner has the burden of demonstrating that the issues are debatable
24 among jurists of reason; that a court could resolve the issues differently; or that the
25 questions are adequate to deserve encouragement to proceed further. *Id.* In this case,
26 no reasonable jurist would find this Court’s dismissal of the petition debatable or wrong.
27 The Court therefore denies petitioner a certificate of appealability.

28 ///

1 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no.
2 1) is granted.

3 It is further ordered that petitioner's motion to have a copy of the docket sheet in
4 this action sent to him (dkt. no. 3) is granted. The Clerk of Court shall send petitioner a
5 copy of the CM/ECF docket sheet for this action.

6 It is further ordered that this action is dismissed for failure to state a cognizable
7 habeas corpus claim. The dismissal is without prejudice to petitioner raising his claims
8 in a civil rights action pursuant to 42 U.S.C. § 1983, filed in a new case.

9 It is further ordered that the Clerk of the Court shall send petitioner two (2) copies
10 of an *in forma pauperis* application form for a prisoner, one (1) copy of the instructions
11 for same, two (2) copies of a blank 42 U.S.C. § 1983 prisoner civil rights form, and one
12 (1) copy of instructions for the same. The Clerk shall also send petitioner a copy of the
13 petition.

14 It is further ordered that petitioner may file a civil rights complaint and *in forma*
15 *pauperis* application in a new action, but he may not file further documents in this
16 action.

17 It is further ordered that petitioner is denied a certificate of appealability.

18 It is further ordered that the Clerk shall enter judgment accordingly.

19 DATED THIS 8th day of May 2015.

20
21 
22 _____
23 MIRANDA M. DU
24 UNITED STATES DISTRICT JUDGE
25
26
27
28