



1 952 (9th Cir. 1996). The § 1983 action “is barred (absent prior invalidation) -- no matter the  
2 relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct  
3 leading to conviction or internal prison proceedings) -- if success in that action would necessarily  
4 demonstrate the invalidity of confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74, 81-  
5 82 (2005). To obtain federal judicial review of a state court conviction, a party must file a  
6 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and must first exhaust his state  
7 judicial remedies. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

8 Here, plaintiff’s claim that he was falsely arrested necessarily implies the invalidity of his  
9 criminal proceeding. Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) (per  
10 curiam) (concluding that claims for false arrest and false imprisonment were not cognizable  
11 because a finding that there was no probable cause to arrest plaintiff for disturbing the peace  
12 would necessarily imply that plaintiff’s conviction for disturbing the peace was invalid).

13 Moreover, review of court records reflects that plaintiff is presently challenging his  
14 conviction in Case No. 11F03389 through a petition for writ of habeas corpus in Thomas v.  
15 Beard, 2:14-cv-0758 TLN AC (E.D. Cal.). The petition includes plaintiff’s allegations that the  
16 arrest warrant was based on false information and was not investigated thoroughly, and that his  
17 conviction was obtained by use of evidence obtained pursuant to an unlawful arrest. Id., ECF  
18 No. 1 at 4-5.

19 Thus, because plaintiff seeks damages for allegedly unconstitutional criminal proceedings  
20 in a criminal case, and because he has not alleged that his conviction has already been  
21 invalidated, and could not so allege in light of his pending habeas action, a § 1983 claim for  
22 damages has not yet accrued. See Heck, 512 U.S. at 489-90. Plaintiff cannot remedy this defect  
23 by amendment. Accordingly, the undersigned recommends that this action be dismissed without  
24 prejudice.

25 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court is  
26 directed to assign a district judge to this case; and

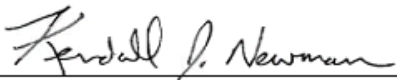
27 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

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These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 7, 2016

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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