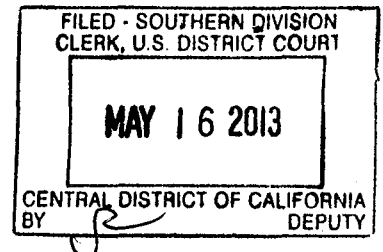


1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
2 FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *Petitioner*
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
3 RECORD IN THIS ACTION ON THIS DATE.

4 DATED: 5.16.13
DEPUTY CLERK



5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9
10 MARK SHANNON WEAVER,) Case No. CV 13-3269-FMO (JPR)
11)
12) Petitioner,) MEMORANDUM AND ORDER SUMMARILY
13) vs.) DISMISSING ACTION WITHOUT
14) LINDA SANDERS, Warden,) PREJUDICE
15) Respondent.)

16 Petitioner's 28 U.S.C. § 2241 habeas action improperly
17 challenges the conditions of his confinement rather than the
18 validity or duration of that confinement. Accordingly, the Court
19 dismisses the petition summarily, without prejudice to
20 Petitioner's pursuit of relief through a civil rights action
21 under 42 U.S.C. § 1983.

22 Petitioner Mark Shannon Weaver is a federal inmate currently
23 housed at the Federal Correctional Center in Terre Haute,
24 Indiana. He asserts that personal property mailed to him at FCC
25 Beaumont, Texas, from the FCC in Lompoc, California, at both of
26 which he was apparently previously housed, never arrived and has
27
28

1 been lost. (Pet. at 3.)¹ He further asserts that prison
2 officials did not follow proper procedure in preparing and
3 shipping the materials. (Pet. at 4.) He seeks to be "reimbursed
4 for lost or stolen property by staff incompetence," for a total
5 of \$778.90. (Pet. at 3.)

6 But the principal purpose of a habeas corpus writ is to
7 provide a remedy for prisoners challenging the fact or duration
8 of their confinement and who are thus seeking either immediate or
9 a sooner-than-scheduled release. See Preiser v. Rodriguez, 411
10 U.S. 475, 484, 93 S. Ct. 1827, 1833, 36 L. Ed. 2d 439 (1973)
11 (holding that habeas petition, not civil rights action, proper
12 vehicle for seeking restoration of good-time credits). The
13 Supreme Court has left open the possibility that habeas petitions
14 "may . . . also be available to challenge . . . prison
15 conditions," which ordinarily must be challenged by way of a
16 civil rights action. Id. at 499-500; accord Bell v. Wolfish, 441
17 U.S. 520, 527 n.6, 99 S. Ct. 1861, 1868 n.6, 60 L. Ed. 2d 447
18 (1979) (noting possibility of habeas as means to address prison
19 conditions but declining to decide issue). Nor has the Ninth
20 Circuit completely foreclosed the use of habeas actions to
21 challenge prison living conditions. See Docken v. Chase, 393
22 F.3d 1024, 1030 & n.6 (9th Cir. 2004) (collecting cases
23 illustrating how Ninth and several other "Circuits have all
24 struggled . . . with the distinction between the two remedies"
25 but noting that "[n]one ha[s] suggested that the avenues for
26 relief must always be mutually exclusive").

27
28 ¹ The pages of the Petition are not in order. The Court
uses the preprinted number at the bottom of each page.

1 Allowing a habeas corpus action to challenge prison
2 conditions appears to be the rare exception, however. The Ninth
3 Circuit has made clear that the preferred, "proper" practice is
4 to limit habeas cases to claims that would lead to the
5 petitioner's release sooner than otherwise would occur and to
6 confine other prisoner claims to civil rights suits. See Badea
7 v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) ("A civil rights
8 action, in contrast [to a habeas petition], is the proper method
9 of challenging 'conditions of . . . confinement.'"); accord
10 Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979)
11 (affirming dismissal of habeas petition because petition's
12 challenges to conditions of confinement had to be brought in
13 civil rights action); see also Gavin v. Lappin, No. CV 11-00095
14 AHM (RZ), 2011 WL 166288 (C.D. Cal. Jan. 12, 2011) (dismissing
15 habeas petition seeking return of property allegedly lost by
16 prison officials without prejudice to refile as civil rights
17 action).

18 Here, if Petitioner's claim were to succeed, he would not be
19 entitled to an accelerated release from confinement. Instead, he
20 would get his property back or receive the fair value of it. The
21 Court sees no justification for deviating from the "proper"
22 course, namely, requiring conditions-of-confinement claims like
23 Petitioner's to be brought in a civil rights action. Although a
24 district court does have discretion to construe a habeas petition
25 raising civil rights claims as a civil rights action, see
26 Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407, 409, 30
27 L. Ed. 2d 418 (1971) (superseded by statute on other grounds),
28 the Court chooses not to do so here, given that Petitioner

1 appears to allege mere negligence, not any sort of constitutional
2 violation.²

3 For the foregoing reasons, the Court DISMISSES this action
4 WITHOUT PREJUDICE.


5 IT IS SO ORDERED.

6
7
8 DATED: May 15, 2013

/s/

FERNANDO M. OLGUIN
U.S. DISTRICT JUDGE

9
10 Presented by:

11 
12 _____
13 Jean Rosenbluth
14 U.S. Magistrate Judge

15
16
17
18
19
20
21
22
23
24
25

26 _____
27 ²Petitioner apparently may not bring a federal tort action.
28 See generally Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 128 S.
Ct. 831, 169 L. Ed. 2d 680 (2008) (holding that prison officials
who negligently lost property during transfer of prisoner are
immune from suit).