

1 Petitioner is not challenging a state conviction or sentence, the
2 execution of a sentence, or the fact of his custody or incarceration.
3 Rather, Petitioner complains that he has requested legal forms,
4 including a form civil rights complaint, and his requests have not been
5 fulfilled. He contends that, under the United States Constitution, he
6 is "suppose[d] to get . . . government legal documents." (Petition at 3.)
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9 Generally, a state prisoner challenging the fact or duration of his
10 state conviction or sentence on the ground of alleged violations of
11 federal rights, and seeking release from imprisonment as a result, does
12 so by way of a federal habeas corpus petition pursuant to 28 U.S.C. §
13 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); Sisk v.
14 Branch, 974 F.2d 116, 117 (9th Cir. 1991). By contrast, challenges to
15 a prisoner's conditions of confinement must be brought through a civil
16 rights action, rather than through a habeas corpus petition. See Badea
17 v. Cox, 931 F.2d 573, 574 (9th Cir. 1991); see also Docken v. Chase, 393
18 F.3d 1024, 1026 (9th Cir. 2004) ("Traditionally, challenges to prison
19 conditions have been cognizable only via § 1983, while challenges
20 implicating the fact or duration of confinement must be brought through
21 a habeas petition."). A civil rights action is the "proper remedy" for
22 a prisoner "who is making a constitutional challenge to the conditions
23 of his prison life, but not to the fact or length of his custody."
24 Preiser, 411 U.S. at 500. "[C]onstitutional claims that merely
25 challenge the conditions of a prisoner's confinement, whether the inmate
26 seeks monetary or injunctive relief, fall outside of that core [of
27 habeas relief] and may be brought pursuant to § 1983 in the first
28 instance." Nelson v. Campbell, 541 U.S. 637, 643 (2004).

1 Notwithstanding Petitioner's invocation of Section 2254, he seeks
2 to pursue a civil rights claim based on an asserted violation of his
3 federal constitutional right to access the courts. He apparently seeks
4 injunctive relief, *i.e.*, an order requiring Jail officials to provide
5 him with the legal forms he has requested. Petitioner seeks relief that
6 is not available through a habeas action. See Douglas v. Jacquez, 626
7 F.3d 501, 504 (9th Cir. 2010) ("The power of a federal habeas court 'lies
8 to enforce the right of personal liberty' . . . [and as] such, a habeas
9 court 'has the power to release' a prisoner, but 'has no other
10 power.'" (citations omitted). Petitioner's claim, therefore, must be
11 raised by way of a civil rights complaint, rather than through a habeas
12 petition brought under Section 2254.

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14 While the Court may construe a flawed habeas petition as a civil
15 rights action, see Wilwording v. Swenson, 404 U.S. 249, 251 (1971),
16 converting the Petition to a 42 U.S.C. § 1983 complaint would be
17 improper, given that: (1) the Petition was not accompanied by the \$350
18 filing fee; (2) the Petition was not accompanied by a certified trust
19 account statement covering the past six months as required by 28 U.S.C.
20 § 1915(a); (3) the Petition was not accompanied by an authorization from
21 Petitioner to have the \$350 filing fee deducted from his trust account
22 pursuant to 28 U.S.C. § 1915(b); (4) no viable Section 1983 claim has
23 been stated against the sole named Respondent¹; and (5) there is no

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27 ¹ The State of California is the only named Respondent. The
28 Petition, however, complains about events that allegedly took place at
a facility run by the County of Los Angeles Sheriff's Department.

1 indication that Petitioner has exhausted his administrative remedies.²

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3 In addition, if the Petition were converted to a Section 1983
4 complaint, Petitioner would be obligated to pay the \$350 filing fee for
5 such a civil action, either in full or through withdrawals from his
6 prison trust account in accordance with the availability of funds. See
7 28 U.S.C. § 1915(b). The dismissal of this action at the pleading stage
8 would not end Petitioner's obligation to pay that \$350 filing fee.
9 Further, the Court would be obligated to screen the converted Petition
10 pursuant to the screening provisions of the Prisoner Litigation Reform
11 Act of 1995. See 28 U.S.C. § 1915A(b); 42 U.S.C. § 1997e(c)(1).
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13 As noted above, the allegations of the Petition do not state a
14 cognizable Section 1983 claim against Respondent. If the converted
15 Petition ultimately were dismissed for failure to state a claim upon
16 which relief may be granted, that dismissal could count as a "strike"
17 against Petitioner for purposes of 28 U.S.C. § 1915(g), which provides
18 that a prisoner who has three "strikes" -- i.e., prior actions dismissed
19 on the grounds that they are frivolous, malicious, or fail to state a
20 claim upon which relief may be granted -- may not bring an action or
21 appeal without prepayment of the full filing fee unless "the prisoner is
22 under imminent danger of serious physical injury." Thus, the Court
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24 ² 42 U.S.C. § 1997e(a) provides that: "No action shall be
25 brought with respect to prison conditions under section 1983 of this
26 title, or any other Federal law, by a prisoner confined in any jail,
27 prison, or other correctional facility until such administrative
28 remedies as are available are exhausted." Section 1997e(a) requires
exhaustion "irrespective of the forms of relief sought and offered
through administrative avenues." Booth v. Churner, 531 U.S. 731, 741
n.6 (2001). Petitioner does not allege that he has exhausted his
administrative remedies available to him at the Los Angeles County Jail.

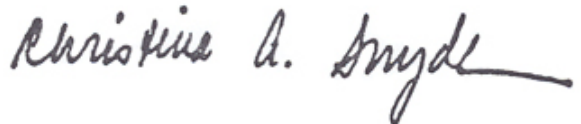
1 believes it is appropriate to dismiss the Petition, without prejudice,
2 so that Petitioner may determine whether or not he wishes to raise his
3 present claim through a properly-submitted civil rights complaint.³
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5 Accordingly, based upon the foregoing, IT IS ORDERED that Judgment
6 shall be entered dismissing the instant Petition without prejudice.
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8 In addition, pursuant to Rule 11(a) of the Rules Governing Section
9 2254 Cases in the United States District Courts, the Court has
10 considered whether a certificate of appealability is warranted in this
11 case. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-
12 85, 120 S. Ct. 1595, 1604 (2000). The Court concludes that a
13 certificate of appealability is unwarranted and, thus, a certificate of
14 appealability is DENIED.
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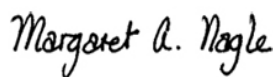
16 LET JUDGMENT BE ENTERED ACCORDINGLY.
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18 DATED: January 30, 2015
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CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

PRESENTED BY:



MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

³ Before filing such a complaint, Petitioner will have an
opportunity to consider carefully if he is willing to incur the \$350
filing fee obligation and risk the possibility of incurring a "strike."