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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRUCE PATRICK HANEY,)	1:10-cv-01841-SKO-HC
)	
Petitioner,	)	ORDER DIRECTING CLERK'S OFFICE TO
	)	SEND PETITIONER A HABEAS
	)	PETITION, A CIVIL RIGHTS
v.	)	COMPLAINT, AND AN APPLICATION TO
	)	PROCEED IN FORMA PAUPERIS
R. AGUIRRE,)	
	)	ORDER REQUIRING PETITIONER TO (1)
Respondent.	)	FILE A NOTICE OF VOLUNTARY
	)	DISMISSAL, OR (2) FILE A PETITION
_____	)	OR, ALTERNATIVELY A COMPLAINT AND
	)	PAY THE FILING FEE OR FILE AN IN
	)	FORMA PAUPERIS APPLICATION,
	)	WITHIN THIRTY (30) DAYS

Bruce Patrick Haney, a state prisoner who is incarcerated at Corcoran State Prison and is serving a determinate sentence for an offense involving a controlled substance, proceeds pro se with a petition for writ of habeas corpus filed on October 6, 2010. He also filed a motion seeking the appointment of counsel or an order to the Fresno County Superior Court to set a trial date and order the Plaintiff produced for trial.

In the petition and attached documents, Petitioner complains that while he was incarcerated in the Pleasant Valley State Prison, Respondent Aguirre and others used excessive force

1 against him, refused to summon medical care for his injuries, and
2 retaliated against him for his expressed intention to report
3 Aguirre's misconduct. (Doc. 1, 21.) Petitioner filed a civil
4 suit against Aguirre and another officer in the Fresno County
5 Superior Court. Recently, the Superior Court stayed the action
6 and the trial until May 2012, a time following Petitioner's
7 projected release date from prison. (Doc. 1, 17.) Petitioner
8 filed habeas corpus petitions in the Fifth District Court of
9 Appeal and the Supreme Court of California which have been
10 denied. Petitioner seeks from this Court an order directing the
11 Superior Court to set his state civil case for trial and direct
12 state authorities to transport Petitioner to trial. Petitioner
13 alleges that his rights to meaningful access to the courts, due
14 process of law, and equal protection have been denied.

15 This Court understands Petitioner's petition to relate to
16 the conditions of his confinement, namely, his ability to attend
17 trial and thereby to have access to the courts and to enjoy due
18 process of law and equal protection of the law. It does not
19 appear that his petition relates to the duration or legality of
20 his confinement pursuant to his underlying criminal sentence.

21 Although Petitioner purports to be attempting to appeal
22 denial of his state habeas petitions and to obtain a writ
23 producing him for state trial, a habeas petition in federal court
24 is the proper mechanism to challenge the fact or duration of
25 confinement. 28 U.S.C. § 2254(a); *Badea v. Cox*, 931 F.2d 573,
26 574 (9th Cir. 1991) (citing *Preiser v. Rodriguez*, 411 U.S. 475,
27 485, 93 S.Ct. 1827, 1833 (1973)). In contrast, challenges to
28 conditions of confinement, such as those set forth in

1 Petitioner's petition, must be raised in a civil rights action.
2 Badea, 931 F.2d at 574 (citing Preiser, 411 U.S. at 485, 93 S.Ct.
3 at 1833).

4 The Court will direct the Clerk's Office to provide
5 Petitioner with a form habeas petition, a civil rights complaint
6 form, and an application to proceed in forma pauperis. With the
7 above notice in mind, Petitioner shall file either a petition or
8 a complaint bearing the case number of this proceeding within
9 thirty (30) days.

10 Further, although this Court has authorized Petitioner to
11 proceed in forma pauperis with respect to a habeas petition, it
12 is anticipated that Petitioner will file a civil rights complaint
13 in response to this order. In a civil rights action, the
14 plaintiff must either pay the filing fee in full or file an
15 application to proceed in forma pauperis. Therefore, either the
16 fee or an application to proceed in forma pauperis with respect
17 to a civil rights action must be submitted along with a
18 complaint.

19 In the alternative, Petitioner may file a notice of
20 voluntary dismissal if he no longer wishes to pursue this action.
21 Fed. R. Civ. P. 41(a)(1).

22 Accordingly, it is HEREBY ORDERED that:

23 1. The Clerk's Office shall send Petitioner a form habeas
24 petition for a state prisoner, a civil rights complaint form for
25 an incarcerated person, and an application to proceed in forma
26 pauperis; and

27 2. Within thirty (30) days from the date of service of this
28 order, Petitioner shall (1) file a notice of voluntary dismissal,

1 or (2) file either a petition, or a complaint accompanied by
2 either the filing fee in full or an application to proceed in
3 forma pauperis; and

4 3. Petitioner is informed that the failure to comply with
5 this order will result in dismissal of this action, without
6 prejudice.

7

8 IT IS SO ORDERED.

9 Dated: October 12, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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