## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 JOSELUIS MORALES, Case No.: 1:13-cv-01035-LJO-JLT 12 Petitioner, ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE ADDITIONAL 13 v. OBJECTIONS (Doc. 8) 14 MARTIN BITER, 15 Respondent. 16 17 Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas 18 corpus pursuant to 28 U.S.C. § 2254. 19 **PROCEDURAL HISTORY** 20 The instant petition was filed on July 5, 2013. (Doc. 1). On July 18, 2013, the Court issued 21 Findings and Recommendations to dismiss the petition for lack of habeas jurisdiction. (Doc. 3). The 22 Findings and Recommendations provided that either party could file objections within 21 days. On 23 August 1, 2013, Petitioner timely filed his objections. (Doc. 5). On August 23, 2013, the Findings 24 and Recommendations were adopted by the District Judge and judgment was entered. (Docs. 6 & 7). 25 That same day, Petitioner filed the instant motion for leave to file additional objections to the Findings 26 and Recommendations. (Doc. 8). In that motion, Petitioner, in essence, asked that if he could not

challenge prison conditions in a habeas petition, that he be allowed to proceed in a civil rights suit

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pursuant to 42 U.S.C. § 1983.

## **DISCUSSION** As the Court noted in the Findings and Recommendations, Petitioner did not challenge the fact or duration of his confinement, which is the sole basis for invoking the Court's habeas jurisdiction. Rather, he raised claims that were confined exclusively to conditions of confinement. In the Findings and Recommendations, the Court advised Petitioner that if he wished to pursue his claims challenging the conditions of confinement, he must file a lawsuit pursuant to 42 U.S.C. § 1983. (Doc. 3, p. 4). Under such circumstances, Petitioner's tardy request to have the Court construe his habeas petition as a § 1983 complaint is both untimely and inappropriate. Relief by way of § 1983 remains available to Petitioner. He simply has to file the appropriate complaint with the appropriate Court. **ORDER** For the foregoing reasons, it is HEREBY ORDERED that Petitioner's motion for leave to file additional objections (Doc. 8), is DENIED. IT IS SO ORDERED. /s/ Jennifer L. Thurston Dated: March 10, 2014 UNITED STATES MAGISTRATE JUDGE