

1 However, as accurately stated in the Findings and Recommendations, Plaintiff's claims
2 either directly or indirectly challenge the validity of his confinement, which may only be pursued
3 in a petition for a writ of habeas corpus. Plaintiff has failed to state any claims that are
4 cognizable under section 1983. Plaintiff may not amend the Complaint to change the nature of
5 claims he has raised in this suit to attempt to state a cognizable claim, *George v. Smith*, 507 F.3d
6 605, 607 (7th Cir. 2007) and the deficiencies in Plaintiff's pleadings are not capable of being
7 cured through amendment, *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012).

8 Plaintiff filed timely objections on October 30, 2014 in which he persisted to complain of his
9 confinement. (Doc. 13.) The order adopting the Findings and Recommendations which
10 dismissed this action, found that this action was barred pursuant to *Heck v. Humphrey*, 512 U.S.
11 477 (1994) and that Plaintiff failed to state a cognizable claim for relief. (Doc. 14.)

12 On June 3, 2015, Plaintiff filed a notice of appeal. (Doc. 16.) On June 8, 2015, the Court
13 of Appeals for the Ninth Circuit referred the matter to the district court for the limited purpose of
14 determining whether *in forma pauperis* should continue for this appeal. 28 U.S.C. § 1915(a)(3);
15 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). For the reasons which follow,
16 the Court finds that Plaintiff's *in forma pauperis* status on appeal should be revoked. *Id.*

17 “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it
18 is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The test for allowing an appeal *in forma*
19 *pauperis* is easily met; the good faith requirement is satisfied if the appellant seeks review of any
20 issue that is not frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing
21 *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917 (1962)); *see also Hooker v. American*
22 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-frivolous, the
23 appeal must proceed *in forma pauperis* as a whole).

24 Despite repeated warnings of the parameters and application of *Heck v. Humphrey*, 512
25 U.S. 477, 487-88 (1994) to actions under section 1983, Plaintiff persisted to complain of the
26 protocols under which he is being civilly detained. Further, despite repeatedly being given the
27 legal standards that must be met to state a cognizable claim, Plaintiff failed to do so -- which
28 makes all claims Plaintiff might hope to pursue on appeal frivolous. Plaintiff does not seek

1 review of any issue that is not frivolous.

2 Accordingly, the Court HEREBY ORDERS as follows:

3 1. Pursuant to 28 U.S.C. § 19156(a)(3), the Court finds that Plaintiff's appeal was not
4 taken in good faith and he should not be permitted to proceed in forma pauperis on appeal; and

5 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), the Clerk of the Court
6 shall serve this order on Plaintiff and the Court of Appeals for the Ninth Circuit.

7 IT IS SO ORDERED.

8 Dated: June 9, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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