

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GARY BARGER, also known as Gary Fisher,

Case No. 1:14-CV-01659-SMS HC

Petitioner,

**ORDER DISMISSING PETITION
AND CLOSING CASE**

DIRECTOR OF "OPS" OF CDCR,

(Doc. 13)

On November 4, 2014, this Court issued a screening memorandum in which it questioned whether Petitioner sought to file a habeas corpus petition or a claim pursuant to 42 U.S.C. § 1983. The Court dismissed the petition, directing Petitioner to amend it to include only those claims cognizable in a habeas corpus petition. Petitioner was directed to pursue his Section 1983 claims in a separate petition, which needed to be filed in the Sacramento Division, which is the proper venue for those claims.

On December 8, 2014, Petitioner filed a Section 1983 action in this Court which was dismissed for failure to pay the filing fee.¹ *Barger v. Director of OPS of CDCR*, No. 1:14-cv-01956-LJO-BAM. On December 10, 2014, Petitioner filed a document in the above-captioned case entitled

¹ Pursuant to 28 U.S.C. § 1915, with certain exceptions, Petitioner is no longer eligible to file Section 1983 actions *in forma pauperis*. See *Barger v. Director of OPS of CDCR*, No. 2:14-cv-01323-TLN-EFB.

1 "Motion for Injunction Order by the Matter of Law Order," which, although failing to cogently set
2 forth individual claims, clearly indicated Petitioner's intent to allege challenges to conditions of
3 imprisonment. Doc. 13.

4 Challenges to the conditions of prison life are properly brought as civil rights claims under
5 42 U.S.C. § 1983. *McCarthy v. Bronson*, 500 U.S. 136, 142 (1991). A federal petition for writ of
6 habeas corpus concerns whether a petitioner is in custody in violation of the Constitution. 28 U.S.C.
7 § 2254(a). "Habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or
8 duration of his confinement and seeks immediate or speedier release, even though such a claim may
9 come within the literal terms of § 1983." *Preiser v. Rodriguez*, 411 U.S. 475, 488-89 (1973). A
10 petitioner may not seek Section 1983 relief by means of a habeas corpus petition. *See Heck v.*
11 *Humphrey*, 512 U.S. 477, 487-88 (1994); *Preiser*, 411 U.S. at 498-99 n. 15; *Young v. Kenny*, 907
12 F.2d 874 (9th Cir. 1990); *Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254*
13 *Cases*.

14 Accordingly, the Court hereby DISMISSES this case with prejudice. The Clerk of Court is
15 directed to close the case.

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17 IT IS SO ORDERED.

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19 Dated: December 17, 2014

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21 /s/ Sandra M. Snyder
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28 UNITED STATES MAGISTRATE JUDGE