

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

10 LUIS MARIO GUERRERO, Case No. 1:14-cv-10948-SKO (PC)

11 Plaintiff,

ORDER (1) DIRECTING CLERK'S OFFICE
TO SEND COMPLAINT FORM AND
HABEAS PETITION FORM, (2)
DISMISSING COMPLAINT, AND (3)
REQUIRING PLAINTIFF TO FILE HABEAS
PETITION, AMENDED COMPLAINT, OR
NOTICE OF VOLUNTARY DISMISSAL
WITHIN THIRTY DAYS

13 || BRYON BLEUM, et al..

14 Defendants.

(Doc. 1)

18 || I. Background

19 Plaintiff Luis Mario Guerrero (“Plaintiff”), a state prisoner proceeding pro se, filed a civil
20 rights complaint pursuant to 42 U.S.C. § 1983 on October 20, 2014.¹ The United States District
21 Court for the Northern District of California transferred the action to the Eastern District of
22 California given Plaintiff’s present incarceration at Valley State Prison (“VSP”) in Chowchilla,
23 California, as venue for claims arising out of conditions of confinement at VSP is proper in this
24 district. 28 U.S.C. § 1331(b). However, the precise basis for Plaintiff’s legal claim is unclear, and

²⁷ Plaintiff alternates identifying himself as Luis Mario Guerrero, Luis Mario Guerrero Angulo, and Luis Mario Angulo Vaes.
²⁸

1 Plaintiff shall be required to clarify the nature of his claim.² See 28 U.S.C. § 1915A(a) (courts are
2 required to review complaints brought by prisoners against governmental entities or against
3 officers or employees of governmental entities).

4 **II. Nature of Claim**

5 Plaintiff is incarcerated at VSP and if he seeks to litigate his conditions of confinement at
6 VSP in this action, venue is proper in this district.³ 28 U.S.C. § 1391(b). However, Plaintiff is
7 suing various state parole agents and police officers located in Los Angeles, California, and if he is
8 seeking to litigate a violation of his federal rights based on events which occurred in Los Angeles,
9 venue is proper in the Central District of California and this case will be transferred. 28 U.S.C. §
10 1404(a); *see Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986) (court may raise defective
11 venue *sua sponte*); *see also Davis v. Mason County*, 927 F.2d 1473, 1479 (9th Cir. 1991) (courts
12 have broad discretion regarding severance). (Doc. 1, Comp., §§ II, III.) Further complicating this
13 determination is the relief sought by Plaintiff: an order vacating his conviction and retrial in
14 federal court, apparently.⁴ While a challenge to conditions of confinement is properly raised in a
15 civil rights action, a challenge to the fact and/or the duration of confinement must be raised in a
16 petition for writ of habeas corpus. 28 U.S.C. § 2254(a); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.
17 1991) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 485, 93 S.Ct. 1827, 1833 (1973)); *accord*
18 *Beardslee v. Woodford*, 395 F.3d 1064, 1068-69 (9th Cir. 2005) (per curiam).

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21 ² Plaintiff filed two applications to proceed in forma pauperis, but determination of appropriate filing fee is dependent
22 upon Plaintiff's clarification regarding the nature of his claim and the Court defers its ruling until Plaintiff files either
an amended complaint or a habeas petition. 28 U.S.C. § 1914(a).

23 ³ Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or other federal rights by
24 persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir 2009); *Long v. County of*
Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). Liability
25 under section 1983 may not be imposed under a theory of *respondeat superior*, and Plaintiff must allege some causal
connection between the conduct of each named defendant and the violation at issue. *Ashcroft v. Iqbal*, 556 U.S. 662,
676-77, 129 S.Ct. 1937, 1948-49 (2009); *Lemire v. California Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75
(9th Cir. 2013); *Lacey v. Maricopa County*, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); *Starr v. Baca*, 652 F.3d
1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

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28 ⁴ For relief sought, Plaintiff alleges, "Yes your honor I am asking for a *reset or refile & retrial* to a fed. trial-court for
lawsuit - suppression ground & compensation order through the LA [Sheriff's] Dept. & Administration/County as
ordered by them & the County of LA." (Comp., § IV (emphasis added).)

1 The Court will direct the Clerk's Office to provide Plaintiff with a habeas petition form
2 and a complaint form. Plaintiff shall file either (1) a habeas petition setting forth facts supporting
3 his challenge to the fact and/or the duration of his confinement or (2) a complaint setting forth
4 facts supporting his claim that his federal rights were violated, through either his conditions of
5 confinement at VSP or the actions or omissions of police officers and parole agents in Los Angeles.
6 Depending on whether Plaintiff intends to pursue a habeas petition or a civil rights action, the
7 Court will rule on his pending application to proceed in forma pauperis as is appropriate. In the
8 alternative, if Plaintiff no longer wishes to pursue this action, he may file a notice of voluntary
9 dismissal. Fed. R. Civ. P. 41(a)(1)(A)(i).

10 | III. Order

11 Based on the foregoing, it is HEREBY ORDERED that:

12 1. The Clerk's Office shall send Plaintiff a habeas petition form and a complaint form;

13 2. Within **thirty (30) days** from the date of service of this order, Plaintiff required to

14 file a habeas petition, an amended complaint, or a notice of voluntary dismissal; and

15 3. The failure to comply with this order will result in dismissal of this action, without

16 prejudice.

IT IS SO ORDERED.

19 Dated: **December 12, 2014**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE