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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON SORRELLS,
Petitioner,

v.

**UNITED STATES MARSHAL
SERVICE,**
Respondent.

Case No. 1:15-cv-01725 AWI-MJS (HC)
**FINDINGS AND RECOMMENDATION
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner is a federal pretrial detainee proceeding *pro se* with the instant petition for habeas corpus pursuant to 28 U.S.C. § 2241.

I. BACKGROUND

On November 16, 2015, Petitioner filed the instant petition for writ of habeas corpus. Petitioner is not in custody as the result of a state or federal court criminal judgment. Rather, Petitioner is a federal pretrial detainee, awaiting sentencing in a pending criminal action in this district for theft of governmental property and theft of mail. (ECF No. 1 at 2-3.) In Petitioner's pending criminal case, United States v. Sorrells, 14-cr-00140-LJO-BAM, a three day trial was held on October 20, 2015. See United States v. Sorrells, 14-cr-00140-LJO-BAM at ECF Nos. 74, 79, 80. At the conclusion of the trial, a jury found Petitioner guilty of five counts of bank fraud, a count of possession of stolen

1 mail, and a count of aggravated identity theft. Id. at ECF Nos. 82-83. Petitioner is
2 scheduled for sentencing on March 7, 2016. Id. at ECF No. 110.

3 In the present petition, Petitioner claims he has been deprived his right to due
4 process based on his lack of access to the correctional facility's law library. (Pet., ECF
5 No. 1.)

6 **I. SCREENING THE PETITION**

7 Because the petition was filed after April 24, 1996, the effective date of the
8 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), AEDPA applies to the
9 petition. Lindh v. Murphy, 521 U.S. 320, 327 (1997); Jeffries v. Wood, 114 F.3d 1484,
10 1499 (9th Cir. 1997).

11 The Rules Governing Section 2254 Cases in the United States District Courts
12 (Habeas Rules) are appropriately applied to proceedings undertaken pursuant to 28
13 U.S.C. § 2241. Habeas Rule 1(b). Habeas Rule 4 requires the Court to make a
14 preliminary review of each petition for writ of habeas corpus. The Court must summarily
15 dismiss a petition "[i]f it plainly appears from the petition and any attached exhibits that
16 the petitioner is not entitled to relief in the district court...." Habeas Rule 4; O'Bremski v.
17 Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also Hendricks v. Vasquez, 908 F.2d 490
18 (9th Cir. 1990). Habeas Rule 2(c) requires that a petition 1) specify all grounds of relief
19 available to the Petitioner; 2) state the facts supporting each ground; and 3) state the
20 relief requested. Notice pleading is not sufficient; rather, the petition must state facts that
21 point to a real possibility of constitutional error. Rule 4, Advisory Committee Notes, 1976
22 Adoption; O'Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v. Allison, 431 U.S.
23 63, 75 n.7 (1977)). Allegations in a petition that are vague, conclusory, or palpably
24 incredible are subject to summary dismissal. Hendricks v. Vasquez, 908 F.2d at 491.

25 Further, the Court may dismiss a petition for writ of habeas corpus either on its
26 own motion under Habeas Rule 4, pursuant to the respondent's motion to dismiss, or
27 after an answer to the petition has been filed. Advisory Committee Notes to Habeas Rule
28 8, 1976 Adoption; see Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

1 **III. DISCUSSION**

2 Pursuant to 28 U.S.C. § 2241, the courts have jurisdiction to consider a habeas
3 petition brought by a federal pretrial detainee. Although Section 2241 establishes
4 jurisdiction in the federal courts to consider pretrial habeas petitions, the courts should
5 abstain from the exercise of that jurisdiction if the issues raised in the petition may be
6 resolved either by trial on the merits or other procedures available to the petitioner in the
7 pending criminal case. See, Fay v. Noia, 372 U.S. 391, 417-20, 83 S. Ct. 822, 9 L. Ed.
8 2d 837 (1963); Jones v. Perkins, 245 U.S. 390, 391-92, 38 S. Ct. 166, 62 L. Ed. 358
9 (1918); Riggins v. United States, 199 U.S. 547, 550-51, 26 S. Ct. 147, 50 L. Ed. 303
10 (1905). In the instant petition, Petitioner complains about his lack of access to the law
11 library. First, the Court notes that Petitioner is represented by legal counsel in his
12 underlying criminal action. Based on his representation, it raises the question as to why
13 he would need to undertake legal research, rather than consult with counsel with regard
14 to any legal issues that may arise. Regardless, the Court should abstain from exercising
15 jurisdiction to the extent that Petitioner’s claims can be resolved in the underlying
16 criminal action.

17 Further, it appears that Petitioner’s claims are not properly cognizable by way of a
18 habeas corpus petition. A habeas corpus petition is the correct method for a prisoner to
19 challenge the “legality or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574
20 (9th Cir. 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory
21 Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

22 In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method
23 for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500
24 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory
25 Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

26 Petitioner’s claim does not implicate the fact or duration of his confinement.
27 Petitioner seeks relief for the conditions of his confinement. (See Pet.) Petitioner desires
28 access to the law library. (Id.) Petitioner does not challenge any of the actions or findings

1 that have occurred in his pending criminal trial.

2 Petitioner's claims are not cognizable grounds for federal habeas corpus relief
3 and must be dismissed. Should Petitioner wish to pursue his claims, he must do so by
4 way of a civil rights complaint. The Court expresses no opinion as to the merits of such a
5 civil rights complaint.

6 As it does not appear possible that the deficiencies identified herein can be cured
7 by amending the complaint, Petitioner is not entitled to leave to amend prior to dismissal
8 of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en
9 banc).

10 In an appropriate case a habeas petition may be construed as a Section 1983
11 complaint. Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2d 418
12 (1971). Although the Court may construe a habeas petition as a civil rights action, it is
13 not required to do so. Since the time when the Wilwording case was decided there have
14 been significant changes in the law. For instance, the filing fee for a habeas petition is
15 five dollars, and if leave to proceed in forma pauperis is granted, the fee is forgiven. For
16 civil rights cases, however, the fee is now \$400 and under the Prisoner Litigation Reform
17 Act the prisoner is required to pay it, even if granted in forma pauperis status, by way of
18 deductions from income to the prisoner's trust account. See 28 U.S.C. 1915(b)(1). A
19 prisoner who might be willing to file a habeas petition for which he or she would not have
20 to pay a filing fee might feel otherwise about a civil rights complaint for which the \$400
21 fee would be deducted from income to his or her account. Also, a civil rights complaint
22 which is dismissed as malicious, frivolous, or for failure to state a claim would count as a
23 "strike" under 28 U.S.C. § 1915(g), which is not true for habeas cases.

24 As the Court finds that Petitioner should have pursued available remedies in his
25 pending federal criminal case, but did not do so, and that the petition challenges the
26 conditions of his confinement, the Court recommends that Petitioner's petition for writ of
27 habeas corpus be dismissed.

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1 **III. RECOMMENDATION**

2 Based on the foregoing, it is HEREBY RECOMMENDED that the petition for writ
3 of habeas corpus be DISMISSED.

4 These Findings and Recommendations are submitted to the assigned United
5 States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B)
6 and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern
7 District of California. Within thirty (30) days after being served with a copy, Petitioner
8 may file written objections with the Court. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations. The Court will then
10 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is
11 advised that failure to file objections within the specified time may waive the right
12 to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
13 2014).

14 IT IS SO ORDERED.

15 Dated: January 23, 2016

16 /s/ Michael J. Seng
17 UNITED STATES MAGISTRATE JUDGE

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