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## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

EARL SIMPSON	· •	Case No. 1:16-cv-00373-SKO (PC)
V.	Plaintiff,	ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED AS BARRED BY HECK V. HUMPHRY, 512 U.S. 477 (1994)
AHLIN,		(Doc. 1)
	Defendant.	TWENTY-ONE (21) DAY DEADLINE

Plaintiff, Earl Simpson, is a civil detainee who is currently proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff contends he has served a twenty year sentence, but instead of being released on parole, he has been detained in a California State Hospital. (Doc. 1.) Plaintiff requests a finding that his due process rights have been violated and that he be released from state custody. (*Id.*) It appears that Plaintiff may have intended to pursue habeas corpus relief, rather than an action under §1983.

When a person in custody challenges the legality or duration of his custody, or raises a constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an allegedly unconstitutional conviction, imprisonment, or confinement, "a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into

question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." Id. at 488. The Complaint does not contain any allegations to show that Plaintiff's detention order has been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus. It appears that Plaintiff's intent in filing this action is for habeas corpus relief rather than to pursue claims under § 1983. Accordingly, it is HEREBY ORDERED that within twenty-one (21) days from the date of service of this order, Plaintiff shall show cause in writing why this action should not be dismissed as barred by Heck v. Humphrey, 512 U.S. 477 (1994). The failure to respond to this order will result in dismissal of this action, without prejudice. IT IS SO ORDERED. 1st Sheila K. Oberto Dated: **January 3, 2017** UNITED STATES MAGISTRATE JUDGE