

1 writ of *habeas corpus*. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874
2 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an
3 allegedly unconstitutional conviction, imprisonment, or confinement, “a § 1983 plaintiff must
4 prove that the conviction or sentence has been reversed on direct appeal, expunged by executive
5 order, declared invalid by a state tribunal authorized to make such determination, or called into
6 question by a federal court's issuance of a writ of *habeas corpus*, 28 U.S.C. § 2254.” *Heck v.*
7 *Humphrey*, 512 U.S. 477, 487-88 (1994). “A claim for damages bearing that relationship to a
8 conviction or sentence that has not been so invalidated is not cognizable under § 1983.” *Id.* at
9 488.

10 The Complaint does not contain any allegations to show that Plaintiff's detention order has
11 been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus. It
12 appears that Plaintiff's intent in filing this action is for *habeas corpus* relief rather than to pursue
13 claims under § 1983.

14 **II. Conclusion & Recommendations**

15 Plaintiff's claims challenges his detention in a California State Hospital rather than his
16 release on parole -- a challenge which may be brought only in a petition for a writ of *habeas*
17 *corpus*. Thus, Plaintiff has failed to state any claims that are cognizable under section 1983 until
18 the actions of which he complains have been reversed, expunged, declared invalid, or called into
19 question by a writ of *habeas corpus*. Plaintiff need not be given leave to amend as these
20 deficiencies are not capable of being cured through amendment. *Akhtar v. Mesa*, 698 F.3d 1202,
21 1212-13 (9th Cir. 2012).

22 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 23 1. Plaintiff's complaint (Doc. 1) be dismissed without prejudice for failure to state a
24 claim upon which relief can be granted;
- 25 2. The Clerk's Office be directed to send Plaintiff a *habeas* petition form; and
- 26 3. If Plaintiff chooses to pursue his claims via a *habeas* petition, or no longer desires
27 to attempt to pursue his claims in the Complaint under 42 U.S.C. § 1983, he must
28 file a notice of voluntary dismissal in this action.

1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **21**
3 **days** after being served with these Findings and Recommendations, Plaintiff may file written
4 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
6 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
7 839 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8
9 IT IS SO ORDERED.

10 Dated: February 8, 2017

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE