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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	MICHAEL MORSE.	No. 1:17-cv-00296-JLT (HC)
12	Petitioner,	ORDER DIRECTING CLERK OF COURT TO ASSIGN DISTRICT JUDGE
13	V.	FINDINGS AND RECOMMENDATION
14	CALIFORNIA DEPARTMENT OF CORRECTIONS,	TO SUMMARILY DISMISS UNEXHAUSTED PETITION
15 16	Respondent.	[TWENTY-ONE DAY OBJECTION DEADLINE]
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18	Petitioner filed a petition for writ of habeas corpus on February 22, 2017, in the	
19	Sacramento Division of this Court. Because Petitioner filed a form habeas petition and he was	
20	convicted in the Kern County Superior Court, the petition was transferred to the Fresno Division.	
21	However, the petition does not challenge the underlying conviction. Rather, it presents various	
22	claims concerning the conditions of his confinement. For this reason, the Court will recommend it	
23	be DISMISSED.	
24	DISCUSSION	
25	A. Preliminary Review of Petition	
26	Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a	
27	petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not	
28	entitled to relief in the district court" Rule 4 of the Rules Governing Section 2254 Cases.	

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
 dismiss, or after an answer to the petition has been filed. <u>Herbst v. Cook</u>, 260 F.3d 1039 (9th
 Cir.2001).

5 <u>B</u>.

## Civil Rights Claims

Petitioner does not challenge his conviction. Rather, he presents various vague
complaints concerning the conditions of confinement. To the extent his claims can be discerned,
it appears Petitioner alleges he suffers from multiple disabilities due to officer brutalities,
excessive force, and inhumane treatment. (Pet. at 5.) He also appears to complain of interference
with his legal mail, harassment, and retaliation. (Pet. at 5.)

11A habeas corpus petition is the correct method for a prisoner to challenge the "legality or12duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser13v. Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. §141983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v.15Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner's civil rights claims16are not cognizable in a federal habeas action and must be dismissed. Petitioner must seek relief17for his complaints by way of a civil rights action.

18 In Nettles, the Ninth Circuit held that a district court has the discretion to construe a 19 habeas petition as a civil rights action under § 1983. Nettles v. Grounds, 830 F.3d 922, 936 (9th 20 Cir. 2016). However, recharacterization is appropriate only if it is "amenable to conversion on its 21 face, meaning that it names the correct defendants and seeks the correct relief," and only after the 22 petitioner is warned of the consequences of conversion and is provided an opportunity to withdraw or amend the petition. Id. Here, the Court does not find recharacterization to be 23 24 appropriate. Petitioner does not name the proper defendants and the claims are not amenable to 25 conversion on their face. Moreover, the claims appear to stem from actions which occurred in the 26 California State Prison in Sacramento, and venue would therefore lie in Sacramento. Finally, 27 Petitioner appears to raise claims related to conditions he is currently experiencing. Accordingly, 28 the Court should not exercise its discretion to recharacterize the action.

1	Therefore, the Court will recommend that the action be dismissed and the Clerk of Court	
2	be directed to send Petitioner a blank civil rights complaint. Petitioner is advised that to the	
3	extent he is challenging the conditions of his confinement in Sacramento, the proper venue for his	
4	complaint is the Sacramento Division of this Court.	
5	ORDER	
6	The Court ORDERS that the Clerk of Court is DIRECTED to assign a District Judge to	
7	the case.	
8	RECOMMENDATION	
9	Accordingly, the Court <b>RECOMMENDS</b> that the habeas corpus petition be	
10	<b>DISMISSED</b> and the Clerk of Court be <b>DIRECTED</b> to provide Petitioner with a blank civil	
11	rights complaint form.	
12	This Findings and Recommendation is submitted to the United States District Court Judge	
13	assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304	
14	of the Local Rules of Practice for the United States District Court, Eastern District of California.	
15	Within twenty-one days after being served with a copy, Petitioner may file written objections	
16	with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings	
17	and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28	
18	U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to	
19	appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).	
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21	IT IS SO ORDERED.	
22	Dated: March 3, 2017 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE	
23	UNITED STATES MADISTRATE JUDGE	
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