



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

5 B. Civil Rights Claims

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

11 A habeas corpus petition is the correct method for a prisoner to challenge the "legality or  
12 duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser  
13 v. Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. §  
14 1983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v.  
15 Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner's civil rights claims  
16 are not cognizable in a federal habeas action and must be dismissed. Petitioner must seek relief  
17 for 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  
23 withdraw or amend the petition. Id. Here, the Court does not find recharacterization to be  
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.

