



1 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to  
2 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th  
3 Cir.2001).

4 B. Civil Rights Claims

5 As Respondent correctly states, Petitioner does not challenge his underlying conviction,  
6 nor does it seek release from illegal custody. Rather, Petitioner challenges the denial of an  
7 administrative appeal, and he seeks a court order requiring prison officials to process the appeal.  
8 He complains of the manner in which his appeal was screened and processed. None of these  
9 claims and arguments lies at the core of habeas jurisdiction.

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

17 In his response to the motion to dismiss, Petitioner requests that his habeas corpus petition  
18 be construed as a civil rights complaint pursuant to Nettles. In Nettles, the Ninth Circuit held that  
19 a district court has the discretion to construe a habeas petition as a civil rights action under §  
20 1983. Nettles v. Grounds, 830 F.3d 922, 936 (9th Cir. 2016). However, recharacterization is  
21 appropriate only if it is "amenable to conversion on its face, meaning that it names the correct  
22 defendants and seeks the correct relief," and only after the petitioner is warned of the  
23 consequences of conversion and is provided an opportunity to withdraw or amend the petition.  
24 Id. Here, the Court does not find recharacterization to be appropriate. Petitioner does not name  
25 the proper defendants and the claims are not amenable to conversion on their face. Accordingly,  
26 the Court should not exercise its discretion to recharacterize the action.

27 Therefore, the Court will recommend that Respondent's motion to dismiss the action be  
28 granted and the Clerk of Court be directed to send Petitioner a blank civil rights complaint.

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**RECOMMENDATION**

Accordingly, the Court RECOMMENDS that Respondent’s motion to dismiss the petition be GRANTED and the Clerk of Court be DIRECTED to provide Petitioner with a blank civil rights complaint form.

This Findings and Recommendation is submitted to the United States District Court Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one days after being served with a copy, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the Objections shall be served and filed within ten court days after service of the Objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

IT IS SO ORDERED.

Dated: January 30, 2018

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE