

1 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th
2 Cir.2001).

3 **B. Civil Rights Claims**

4 Petitioner does not challenge his conviction. He claims that he is a mobility-impaired
5 inmate, and he is not being provided a seated walker, a seat cushion, and a double mattress. A
6 habeas corpus petition is the correct method for a prisoner to challenge the “legality or duration”
7 of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v.
8 Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. §
9 1983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v.
10 Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner’s civil rights claims
11 are not cognizable in a federal habeas action and must be dismissed. Petitioner must seek relief
12 for his complaints by way of a civil rights action.

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

22 Therefore, the Court will recommend that the action be dismissed and the Clerk of Court
23 be directed to send Petitioner a blank civil rights complaint.

24 **ORDER**

25 The Court ORDERS that the Clerk of Court is DIRECTED to assign a District Judge to
26 the case.

27 **RECOMMENDATION**

28 Accordingly, the Court RECOMMENDS that the habeas corpus petition be DISMISSED

1 and the Clerk of Court be DIRECTED to provide Petitioner with a blank civil rights complaint
2 form.

3 This Findings and Recommendation is submitted to the United States District Court Judge
4 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
5 of the Local Rules of Practice for the United States District Court, Eastern District of California.
6 Within twenty-one days after being served with a copy, Petitioner may file written objections
7 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
8 and Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28
9 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to
10 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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12 IT IS SO ORDERED.

13 Dated: November 11, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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