

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN DEON TURNER, JR.,  
  
                                Petitioner,  
  
                                v.  
  
WILLIAM JOE SULLIVAN,  
  
                                Respondent.

Case No. 1:19-cv-00120-JDP  
  
FINDINGS AND RECOMMENDATIONS  
THAT PETITION BE DISMISSED FOR  
LACK OF JURISDICTION  
  
ECF No. 1  
  
OBJECTIONS DUE IN FOURTEEN DAYS  
  
ORDER DIRECTING CLERK OF COURT TO  
ASSIGN CASE TO DISTRICT JUDGE

Petitioner Steven Deon Turner, Jr., a state prisoner without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Petitioner does not challenge his conviction or sentence. Instead, petitioner claims prison staff has failed to accommodate his religious beliefs. This matter is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. *See* R. Governing Section 2254 Cases, Rule 1(b); 28 U.S.C. § 2243. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. I recommend the petition be dismissed for lack of jurisdiction. However, petitioner could still seek relief by filing a new 42 U.S.C. § 1983 claim.

**Discussion**

Under § 2254, a writ of habeas corpus is available to prisoners challenging the fact or duration of their confinement. *See Heck v. Humphrey*, 512 U.S. 477, 481 (1994). In contrast, if a

1 favorable judgment for the petitioner would not “necessarily lead to his immediate or earlier  
2 release from confinement,” the court lacks jurisdiction under this provision. *See Nettles v.*  
3 *Grounds*, 830 F.3d 922, 935-37 (9th Cir. 2016). “Requests for relief turning on circumstances of  
4 confinement may be presented in a [42 U.S.C.] § 1983 action.” *Muhammad v. Close*, 540 U.S.  
5 749, 750 (2004).

6 Here, petitioner claims that the circumstances of his confinement violate his religious  
7 rights, but he does not challenge the fact or duration of his confinement. ECF No. 1. Petitioner  
8 claims that he should (1) be provided kosher meals in accordance with his Islamic faith, ECF No.  
9 1 at 1, and (2) be allowed to assemble with others during Ramadan, ECF No. 1 at 9. Petitioner  
10 claims that the prison violated his constitutional rights and engaged in retaliation, discrimination,  
11 harassment, and intimidation by refusing to accommodate his religious beliefs. *Id.* at 5-7.  
12 Petitioner asks the court to declare that his rights have been violated and order that kosher meals  
13 be provided. *Id.* at 10. Because these claims are not cognizable under § 2254, they should be  
14 dismissed for lack of jurisdiction.

15 I next consider whether to convert the petition into a § 1983 complaint. “If the complaint  
16 is amenable to conversion on its face, meaning that it names the correct defendants and seeks the  
17 correct relief, the court may recharacterize the petition so long as it warns the pro se litigant of the  
18 consequences of the conversion and provides an opportunity for the litigant to withdraw or amend  
19 his or her complaint.” *Nettles*, 830 F.3d at 936 (remanding case to district court to consider claim  
20 under § 1983). When filing a § 1983 claim, courts require plaintiffs to “plead that (1) the  
21 defendants acting under color of state law (2) deprived plaintiffs of rights secured by the  
22 Constitution or federal statutes.” *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).  
23 A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he does an  
24 affirmative act, participates in another’s affirmative act, or omits to perform an act which he is  
25 legally required to do that causes the deprivation of which complaint is made.’” *Preschooler II v.*  
26 *Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588  
27 F.2d 740, 743 (9th Cir. 1978)). There is no *respondeat superior* liability—i.e., liability of a  
28

1 supervisor for acts of a supervisee. Each defendant is only liable for his or her own misconduct.  
2 *See Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009).

3 I decline to convert the petition into a § 1983 complaint for two reasons. First, the  
4 complaint is not amenable to conversion on its face. Petitioner’s allegations about religious  
5 discrimination are too conclusory to state a § 1983 claim, and petitioner has named only the  
6 warden of his institution as the respondent; petitioner has not named the people who directly  
7 committed the affirmative acts or omissions that violated his rights. Second, conversion may be  
8 unfair to petitioner. The filing fee for a habeas petition is \$5, and if leave to proceed *in forma*  
9 *pauperis* is granted, the fee is forgiven. For civil rights cases, however, the filing fee is \$350 plus  
10 an administrative fee of \$50. Under the Prisoner Litigation Reform Act, the prisoner is required  
11 to pay the \$350 filing fee, even if he is granted *in forma pauperis* status, by way of deductions  
12 from the prisoner’s trust account. *See* 28 U.S.C. § 1915(b)(1). If I were to convert this action to a  
13 § 1983 action, petition would face the larger filing and administrative fees—which he might  
14 prefer not to do.

15 While I decline to convert the petition, I note that petitioner is free to file a § 1983  
16 complaint. A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
17 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
18 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
19 require detailed allegations, but legal conclusions do not suffice. *See Iqbal*, 556 at 678. If the  
20 allegations “do not permit the court to infer more than the mere possibility of misconduct,” the  
21 complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.”  
22 *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what  
23 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to  
24 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)  
25 (citations omitted). The complaint must state what actions each named defendant took that  
26 deprived plaintiff of constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678; *Jones v.*  
27 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

28

1 **Order**

2 The clerk’s office is directed to send petitioner a § 1983 complaint form. The clerk of  
3 court is directed to assign this case to a district judge who will review the findings and  
4 recommendations.

5 **Findings and Recommendations**

6 I recommend that the court dismiss the petition and decline to issue a certificate of  
7 appealability. Under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for  
8 the United States District Court, Eastern District of California, I submit the findings and  
9 recommendations to the U.S. District Court Judge presiding over the case. Within fourteen days  
10 of the service of the findings and recommendations, any party may file written objections to the  
11 findings and recommendations. That document must be captioned “Objections to Magistrate  
12 Judge’s Findings and Recommendations.” The presiding District Judge will then review the  
13 findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

14  
15 IT IS SO ORDERED.

16 Dated: November 21, 2019

  
UNITED STATES MAGISTRATE JUDGE

18  
19  
20 No. 206.

21  
22  
23  
24  
25  
26  
27  
28