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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HORACE ANDREW BELL,

Petitioner,

No. CIV S-09-2426 JAM EFB P

vs.

KELLY HARRINGTON,

Respondent.

ORDER

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Petitioner is state prisoner proceeding pro se seeking a writ of habeas corpus. See 28 U.S.C. § 2254. He seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford the costs of suit.

The court has reviewed the petition and, for the reasons explained below, finds that in order to proceed petitioner must file an amended petition or a civil rights complaint pursuant to 42 U.S.C. 1983. See Rule 4, Rules Governing Section 2254 Cases (requiring summary dismissal of habeas petition if, upon initial review by a judge, it plainly appears “that the petitioner is not entitled to relief in the district court”).

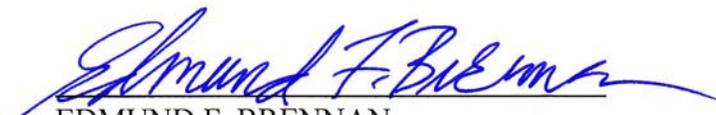
As a general rule, a challenge in federal court to the fact of conviction or the length of confinement must be raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

1 *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). A civil rights action, on the other hand, is  
2 appropriate for challenges to the conditions of an inmate's confinement. *Id.* at 499. In his  
3 petition, petitioner raises claims regarding his conditions of confinement. Specifically, he  
4 alleges that he has been denied a job in his prison's dining hall on the basis of his disability.  
5 Dckt. No. 1 at 4. He does not challenge the fact of his conviction or the length of his  
6 confinement and thus does not state a proper claim for relief under 28 U.S.C. § 2254. Therefore,  
7 the petition must be dismissed. Petitioner will be given leave to amend.

8 Accordingly, it is hereby ORDERED that:

- 9 1. Petitioner's request for leave to proceed *in forma pauperis* is granted.
- 10 2. The petition be dismissed with leave to amend.
- 11 3. Within 30 days, petitioner may file an amended petition seeking relief from the fact or  
12 duration of his confinement, or instead, a civil rights complaint pursuant to 42 U.S.C. 1983.  
13 Failure to comply will result in a recommendation that this action being dismissed.
- 14 4. The Clerk of the Court be directed to send to petitioner a copy each of the forms used  
15 in this court for the filing of an application for a writ of habeas corpus pursuant to 28 U.S.C.  
16 § 2254 and for the filing of a civil complaint pursuant to 42 U.S.C. § 1983.

17 Dated: August 11, 2010.

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19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
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