

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

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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-09-2453 EFB P

vs.

M. FORSYTHE, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On February 25, 2010, the court directed plaintiff to, within 30 days, submit documents for service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure. Dckt. No. 7. The 30 days have passed, and plaintiff has not complied with or otherwise responded to the court’s order. Plaintiff did, however, request that the court assist him with bail, appoint him counsel or alternatively, stay this action. Dckt. Nos. 10, 11.

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. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). A civil rights action, such as this one, is appropriate for challenges to the conditions of an inmate’s confinement. *Id.* at 499. Plaintiff’s request for assistance with bail relates to the fact or length of his confinement and not to the conditions of his confinement. Plaintiff’s request will therefore be denied.

1 District courts lack authority to require counsel to represent indigent prisoners in
2 section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In
3 exceptional circumstances, the court may request counsel voluntarily to represent such a
4 plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood*
5 *v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The court finds that there are no
6 exceptional circumstances in this case.

7 Finally, as the court has previously advised plaintiff, the court will not stay this action.
8 *See* Dckt. No. 7 at 7. Should plaintiff require an extension of time to comply with this order, or
9 future orders, he may request an extension of time to do so.

10 It therefore is ORDERED that:

- 11 1. Plaintiff's March 16, 2010 request for assistance with bail is denied.
- 12 2. Plaintiff's March 17, 2010 request for appointment of counsel and/or a stay, is denied.
- 13 3. Plaintiff has 21 days from the date of this order either to explain his failure to comply
14 with the February 25, 2010 order, or to comply with the order, by submitting one completed
15 summons, seven completed USM-285 forms, and eight copies of the September 1, 2009
16 complaint. Failure to comply with this order will result in a recommendation that this action be
17 dismissed.

18 Dated: April 12, 2010.

19 
EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26