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

HUNG DUONG NGUON,

Petitioner,

No. CIV S-10-0087 EFB P

vs.

KATHLEEN DICKINSON,

Respondent.

ORDER

_____ /

Petitioner is state prisoner proceeding pro se seeking a writ of habeas corpus. See 28 U.S.C. § 2254. This case is before the undersigned pursuant to petitioner’s consent. See 28 U.S.C. § 636; see also E.D. Cal. Local Rules, Appx. A, at (k)(4).

Petitioner seeks leave to proceed *in forma pauperis*. See 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 in detail 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”).

1 As a general rule, a challenge in federal court to the fact of conviction or the length of
2 confinement must be raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
3 *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). A civil rights action, on the other hand, is
4 appropriate for challenges to the conditions of an inmate's confinement. *Id.* at 499. In his
5 petition, petitioner raises claims regarding his conditions of confinement. Specifically, petitioner
6 alleges that correctional officer Laymen has subjected plaintiff to cruel and unusual punishment
7 by harassing plaintiff and putting poison in his food. Compl., Dckt. No. 1 at 5. Petitioner does
8 not challenge the fact of his conviction or the length of his confinement. Therefore, the petition
9 is dismissed with leave to amend.

10 Accordingly, it is hereby ORDERED that:

- 11 1. Petitioner's request for leave to proceed *in forma pauperis* is granted.
- 12 2. The petition is dismissed with leave to amend.
- 13 3. Petitioner may, within 30 days of the date this order is filed, file an amended petition
14 seeking relief from the fact or duration of his confinement, or instead, he may file a civil rights
15 complaint pursuant to 42 U.S.C. § 1983. Failure to comply with this order will result in this
16 action being dismissed.
- 17 4. The Clerk of the Court is directed to send to petitioner a copy each of the forms used
18 in this court for the filing of an application for a writ of habeas corpus pursuant to 28 U.S.C.
19 § 2254 and for the filing of a civil complaint pursuant to 42 U.S.C. § 1983.

20 Dated: April 12, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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