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

JOSEPH LAURICELLA,

Plaintiff,

No. CIV S-10-0859 LKK GGH P

vs.

S.M. SALINAS, et. al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se. On July 22, 2009, plaintiff filed a writ of habeas corpus in the Northern District of California. On April 12, 2010, the case was transferred to the undersigned. A review of the case reveals that this case is not appropriately brought as a writ of habeas corpus.

The purpose of a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is to challenge the legality of confinement. The purpose of a civil rights action is to challenge the conditions of confinement. Because this action challenges conditions of confinement, the court construes it as a civil rights action.<sup>1</sup> Accordingly, the petition is dismissed with leave to file a civil rights complaint.

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<sup>1</sup> Plaintiff raises claims under the Americans with Disabilities Act.

1 The certificate portion of plaintiff's in forma pauperis application which must be  
2 completed by plaintiff's institution of incarceration has not been filled out. Plaintiff will be  
3 provided the opportunity to submit a completed in forma pauperis application and a certified  
4 copy in support of his application.

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. This action is construed as a civil rights action; the petition is dismissed with  
7 twenty-eight days to file a civil rights complaint;

8 2. The Clerk of the Court is directed to send plaintiff the form for a civil rights  
9 complaint used in this district;

10 3. Plaintiff's motion to proceed in forma pauperis (no. 2) is denied;

11 4. Plaintiff shall submit, within twenty-eight days from the date of this order, a  
12 completed affidavit in support of his request to proceed in forma pauperis on the form provided  
13 by the Clerk of Court;

14 5. The Clerk of the Court is directed to send plaintiff a new Application to  
15 Proceed In Forma Pauperis By a Prisoner used in this district;

16 6. Plaintiff's failure to comply with this order will result in a recommendation  
17 that this action be dismissed without prejudice.

18 DATED: June 14, 2010

19 /s/ Gregory G. Hollows

20  
21 GREGORY G. HOLLOWES  
22 UNITED STATES MAGISTRATE JUDGE

23 GGH:AB  
24 laur0859.b