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

JAMES H. LIGHTENER,

Petitioner,

No. CIV S-10-2612 EFB P

vs.

JAMES A. YATES,

Respondent.

ORDER

_____/

Petitioner, a state prisoner without counsel, has filed a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1) and 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)(1)-(2).

The petition states that petitioner is being denied access to the internal appeals process at his prison. This claim may not be brought under § 2254, as it does not implicate the constitutionality of his current or future custody. *See* Rule 1, Rules Governing Habeas Corpus Cases Under Section 2254. It appears that petitioner may be attempting to file a civil suit under 42 U.S.C. § 1983, challenging the constitutionality of the conditions of his confinement.

Petitioner was convicted in Sacramento County, but is currently confined in Fresno County. If petitioner truly wishes to challenge the constitutionality of his current or future

1 custody in a habeas action, he may do so in a habeas action brought in this court. However, if
2 petitioner wishes to file a civil rights action under § 1983, he must do so in the district court in
3 Fresno. See E.D. Cal. Local Rule 120(d).

4 Petitioner seeks leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a). As it is
5 not clear which type of suit he wishes to file, the court will not yet rule on this motion.

6 Accordingly, it is hereby ordered that:

- 7 1. The petition is dismissed with leave to amend;
- 8 2. The Clerk of Court shall send petitioner blank forms for a habeas corpus petition and
9 for a § 1983 complaint;
- 10 3. Within 30 days, petitioner shall file an amended writ of habeas corpus in this court.

11 He may alternatively file a § 1983 complaint in the Fresno division.

12 4. Failure to file an amended writ of habeas corpus within 30 days will result in the
13 dismissal of this action.

14 DATED: November 17, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE