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

HUNG DUONG NGUON,

Petitioner,

No. CIV S-10-2707 EFB P

vs.

TIM V. VIRGA,

Respondent.

ORDER

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to petitioner’s consent. *See* 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. In his petition, he challenges the filing fee imposed by the state courts on prisoners wishing to file lawsuits alleging state tort law claims.


A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that “he is in custody in violation of the Constitution” 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the “legality or duration” of his confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,

1 411 U.S. 475, 484 (1973)); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254
2 Cases. Because petitioner's claim does not challenge his custody, it is not appropriate for a
3 § 2254 action. Therefore, this case is dismissed. *See* Rule 4, Rules Governing § 2254 Cases.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Petitioner's request to proceed in forma pauperis is granted; and
- 6 2. This action is dismissed.

7 Dated: October 18, 2010.


8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE

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