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

WALTER LANGSTON,

Plaintiff,

No. CIV S-11-1662 DAD P

vs.

ARTHURO REYES et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 28 U.S.C. § 636(b)(1). Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). (Doc. No. 4.)

**SCREENING REQUIREMENT**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be

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1 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
2 U.S.C. § 1915A(b)(1) & (2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
5 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
8 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
9 Cir. 1989); Franklin, 745 F.2d at 1227.

10 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
11 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
13 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
14 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
15 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
16 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
17 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
18 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
19 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
20 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

21 The Civil Rights Act under which this action was filed provides as follows:

22 Every person who, under color of [state law] . . . subjects, or causes  
23 to be subjected, any citizen of the United States . . . to the  
24 deprivation of any rights, privileges, or immunities secured by the  
25 Constitution . . . shall be liable to the party injured in an action at  
26 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See



1 defendants have denied him access to the courts in violation of the First and Fourteenth  
2 Amendments. In terms of relief, plaintiff requests monetary damages. (Id.)

### 3 **DISCUSSION**

4 A civil rights action is the proper mechanism for a prisoner seeking to challenge  
5 the conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). In contrast,  
6 habeas corpus proceedings are the proper mechanism for a prisoner seeking to challenge the fact  
7 or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, plaintiff's  
8 allegations and claims imply that the defendants' conduct resulted in his criminal conviction and  
9 sentence. However, plaintiff has not indicated that his ultimate conviction has been overturned  
10 or otherwise invalidated.

11 Under these circumstances, the court cannot allow plaintiff to proceed in this civil  
12 rights action. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) ("a state prisoner's § 1983  
13 action is barred (absent prior invalidation) - no matter the relief sought (damages or equitable  
14 relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal  
15 prison proceedings) - *if* success in that action would necessarily demonstrate the invalidity of  
16 confinement or its duration.") (emphasis in original); Heck v. Humphrey, 512 U.S. 477 (1994) (a  
17 state prisoner may not recover damages under § 1983 for allegedly unconstitutional  
18 imprisonment, or for any other harm caused by "actions whose unlawfulness would render the  
19 imprisonment invalid," unless he can prove that the conviction or other basis for confinement has  
20 been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal  
21 authorized to make such a determination, or called into question by a federal court's issuance of a  
22 writ of habeas corpus). A writ of habeas corpus is plaintiff's sole remedy by which to attack in  
23 federal court his state court criminal conviction and sentence, and that remedy may be pursued  
24 only after he has properly exhausted all of his constitutional claims by presenting them first to the  
25 California Supreme Court.

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1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion to proceed in forma pauperis (Doc. No. 6) is denied; and  
4 2. This action is dismissed without prejudice.

5 DATED: August 2, 2011.

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8 DALE A. DROZD  
9 UNITED STATES MAGISTRATE JUDGE

8 DAD:9  
9 lang1662.56