



1 The court has reviewed the petition as required by Rule 4 of the Rules Governing Section  
2 2254 Proceedings, and finds that it must be summarily dismissed. *See* Rule 4, Rules Governing  
3 § 2254 Cases (requiring summary dismissal of habeas petition if, upon initial review by a judge, it  
4 plainly appears “that the petitioner is not entitled to relief in the district court”).

5 In federal court, there are two main avenues to relief on complaints related to one’s  
6 imprisonment – a petition for habeas corpus pursuant to 28 U.S.C. § 2254, and a civil rights  
7 complaint pursuant to 42 U.S.C. § 1983. Challenges to the validity of one’s confinement or the  
8 duration of one’s confinement are properly brought in a habeas action, whereas requests for relief  
9 turning on the circumstances of one’s confinement are properly brought in a § 1983 action.  
10 *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500  
11 (1973)); *see also* 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ  
12 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only  
13 on the ground that he is in custody in violation of the Constitution or laws or treaties of the  
14 United States.”); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases.  
15 Here, petitioner’s claim does not sound in habeas because it does not concern the validity or  
16 duration of his confinement.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Petitioner’s application for leave to proceed in forma pauperis (ECF No. 5) is denied  
19 as moot;
- 20 2. This action is dismissed without prejudice to filing a civil rights action pursuant to 42  
21 U.S.C. § 1983; and
- 22 3. The court declines to issue a certificate of appealability.

23 Dated: November 6, 2013.

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25 EDMUND F. BRENNAN  
26 UNITED STATES MAGISTRATE JUDGE  
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