

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

13 Accordingly, IT IS HEREBY ORDERED that petitioner's application to proceed in forma
14 pauperis (ECF No. 2) is granted and the Clerk of the Court shall randomly assign this action to a
15 United States District Judge.

16 Further, it is HEREBY RECOMMENDED that this action be dismissed without prejudice
17 to filing a civil rights action pursuant to 42 U.S.C. § 1983.


18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge's Findings and Recommendations.” Failure to file objections
23 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
24 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
25 his objections petitioner may address whether a certificate of appealability should issue in the
26 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing

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1 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
2 enters a final order adverse to the applicant).

3 Dated: November 12, 2014.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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