

1 Rules Governing Section 2254 Cases in the United States District Courts requires the summary
2 dismissal of habeas petitions “[i]f it plainly appears from the petition and any attached exhibits
3 that the petitioner is not entitled to relief in the district court” Rule 4, 28 U.S.C. foll. § 2254.

4 The undersigned has concluded that summary dismissal of the petition is required because
5 petitioner has failed to raise any claim cognizable in a habeas corpus action. As a result of the
6 above deficiencies in the petition, the undersigned recommends summarily dismissing the instant
7 habeas petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases. In light of this
8 recommendation, the court will not assess a filing fee in the instant case.

9 II. 2254 Versus 1983 Relief

10 “Federal law opens two main avenues to relief on complaints related to imprisonment: a
11 petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act . . . 42
12 U.S.C. § 1983. While the two remedies are not necessarily mutually exclusive, Docken v. Chase,
13 393 F.3d 1024, 1031 (9th Cir. 2004), challenges to the validity of any confinement or to
14 particulars affecting its duration are the province of habeas corpus.” Hill v. McDonough, 547
15 U.S. 573, 579 (2006) (quoting Muhammad v. Close, 540 U.S. 749, 750 (2004)). A civil rights
16 action pursuant to 42 U.S.C. §1983 is the appropriate legal vehicle for challenging the conditions
17 of confinement, such as the instant case which do not affect the duration of petitioner’s
18 confinement.

19 The court has discretion to construe petitioner’s claims as a complaint under 42 U.S.C. §
20 1983. See Willwording v. Swenson, 404 U.S. 249, 251 (1971) (district courts have discretion to
21 construe a habeas petition attacking conditions of confinement as a complaint under section 1983
22 despite deliberate choice by petitioner to proceed on habeas), superseded by statute on other
23 grounds as recognized in Woodford v. Ngo, 548 U.S. 81, 84 (2006). However, provisions of the
24 Prison Litigation Reform Act of 1995 (“PLRA”) may make it inappropriate to construe a habeas
25 petition as a civil rights complaint. Due to the PLRA’s filing fee requirements, its provisions
26 requiring sua sponte review of complaints, and its limits on the number of actions a prisoner may
27 be permitted to file in forma pauperis, a prisoner should not be obligated to proceed with a civil
28 rights action unless the prisoner clearly wishes to do so. See 28 U.S.C. §§ 1915 & 1915A; 42

1 U.S.C. § 1997e; Bunn v. Conley, 309 F.3d 1002, 1007 (7th Cir. 2002) (stating that courts should
2 not recharacterize nature of prisoner's claim because PLRA and AEDPA created “pitfalls of
3 different kinds for prisoners using the wrong vehicle”). Therefore, it is recommended that
4 petitioner's claims be summarily dismissed without prejudice instead of converting the claims into
5 a 42 U.S.C. § 1983 action. This recommendation will permit petitioner to file a separate civil
6 rights action raising the claim herein should he choose to do so, without that choice being usurped
7 from him by the court.

8 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of Court
9 randomly assign this case to a District Court judge.

10 IT IS FURTHER RECOMMENDED that:

11 1. The instant habeas corpus petition be summarily dismissed without prejudice to
12 petitioner’s pursuit of a separate civil rights action.


13 2. The Clerk of the Court be directed to send petitioner the court’s form-complaint for
14 prisoners challenging conditions of confinement under 42 U.S.C. § 1983 and an application to
15 proceed in forma pauperis.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
21 he shall also address whether a certificate of appealability should issue and, if so, why and as to
22 which issues. Where, as here, the petition was dismissed on procedural grounds, a certificate of
23 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
24 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of
25 reason would find it debatable whether the petition states a valid claim of the denial of a
26 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
27 McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed
28 within fourteen days after service of the objections. The parties are advised that failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.

2 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: September 23, 2014

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE

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