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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE ROGERS,  
Petitioner,  
v.  
NEVADA COUNTY,  
Respondent.

No. 2:17-cv-1162-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner is a county inmate without counsel. This action was opened when he filed a “petition for writ of habeas corpus,” along with a “civil rights complaint by a prisoner.” ECF No. 1. Thus, it was unclear whether he intended to proceed with this case as a habeas action pursuant to 28 U.S.C. § 2254 or as a civil rights action pursuant to 42 U.S.C. § 1983. On October 4, 2017, the court informed petitioner that habeas petitions and civil rights complaints provide exclusive vehicles for relief and may not be pursued concurrently in a single action. *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (holding that if a state prisoner’s claim would not necessarily lead to immediate or speedier release, it may not be brought in habeas corpus but must be brought, if at all, under § 1983).

Accordingly, the court ordered petitioner to file either a petition for writ of habeas corpus or a civil rights complaint within 30 days and warned petitioner that failure to so comply could result in the dismissal of this action. ECF No. 5. The time for acting has passed and petitioner has not complied with or otherwise responded to the court’s order.

1           Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a  
2 United States District Judge to this action.

3           Further, IT IS HEREBY RECOMMENDED that this action be dismissed without  
4 prejudice. Fed. R. Civ. P. 41(b); E. D. Cal. Local Rule 110.

5           These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
10 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: November 14, 2017.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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