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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENNY MARTINEZ,
Petitioner,
v.
TIM P. KAM,
Respondent.

No. 2:17-cv-01394 GGH

ORDER

Petitioner purports to be proceeding in this action pro se. The complaint was filed on June 6, 2017, in the United States District Court for the Eastern District of Washington. ECF No. 1. On July 5, 2017, Senior District Court Judge Edward F. Shea in that court ordered that the matter be transferred to the Eastern District of California insofar as petitioner is incarcerated within the District. ECF No. 2. The petition itself was submitted by Mr. Frank Martinez, who identifies himself as the brother of petitioner who holds a power of attorney to act on his behalf. As Judge Shea stated in his order, only a licensed attorney may appear on behalf of a plaintiff, and possession of a power of attorney by a non-attorney does not overcome that limitation. Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) *citing* C. E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). This court concurs in Judge Shea’s findings.

In light of the foregoing, this matter will be dismissed without prejudice and petitioner may resubmit a Petition *under his own name as representative* and identifying the means by

1 which the court may contact him directly going forward.

2 In addition, any such amendment in the form of a petition for habeas corpus must identify
3 the basis for such a petition by stating how his federal constitutional rights are compromised by
4 that incarceration. Alternatively, it appears that petitioner may actually be seeking to recover his
5 social security benefits which he alleges have been seized by the government and continue to be
6 withheld from him. If that is the true basis of his complaint, it does not sound in habeas corpus at
7 all as he does not appear to be challenging the facts underlying his arrest and incarceration. He
8 may, therefore choose to file a civil complaint if he has exhausted his administrative remedies
9 with the Social Security Administration, or may file, if appropriate, a constitutional tort action in
10 which case he must allege a specific government agent acting under color of law who effected the
11 seizure and continues to do so and seek damages for the invasion of his constitutional rights.

12 In light of the foregoing, it is THEREFORE ORDERED that:

- 13 1. The pending petition for habeas corpus is dismissed without prejudice;
- 14 2. Petitioner shall file an amended petition or a compliant, if he chooses to do so,
15 pursuant to the conditions stated above within 45 days of the service of this Order;
- 16 3. Any such amended petition/complaint shall provide either:
 - 17 a. Representation by a bona fide licensed attorney as his representative for
18 purpose of this litigation, or,
 - 19 b. Petitioner may appear *pro se* (represent himself) and must set forth an
20 address at which petitioner may be personally served with any further Orders;
- 21 4. The Clerk of the Court shall serve this Order upon petitioner in care of Frank
22 Martinez at the address reflected on the petition now pending.

23 **IT IS SO ORDERED.**

24 DATED: July 24, 2017

25 */s/ Gregory G. Hollows*
26 UNITED STATES MAGISTRATE JUDGE