

1 § 1983. See Wolff v. McDonnell, 418 U.S. 539, 554 (1974); Preiser v. Rodriguez, 411 U.S. 475,
2 499-500 (1973); Ramirez v. Galaza, 334 F.3d 850, 858-859 (9th Cir. 2003), cert. denied, 541 U.S.
3 1063 (2004).

4 In some circumstances, a district court may convert an improperly filed habeas petition
5 into a civil rights complaint. See Nettles v. Grounds, 830 F.3d 922, 935-36 (9th Cir. 2016) (en
6 banc). “If the complaint is amenable to conversion on its face, meaning that it names the correct
7 defendants and seeks the correct relief, the court may re-characterize the petition so long as it
8 warns the pro se litigant of the consequences of the conversion and provides an opportunity for
9 the litigant to withdraw or amend his or her complaint.” Id. at 936 (quoting Glaus v. Anderson,
10 408 F.3d 382 (7th Cir. 2005)). However, provisions of the Prison Litigation Reform Act of 1995
11 (“PLRA”) may make it inappropriate to construe a habeas petition as a civil rights complaint.
12 Due to the PLRA’s filing fee requirements, its provisions requiring sua sponte review of
13 complaints, and its limits on the number of actions a prisoner may be permitted to file in forma
14 pauperis, a prisoner should not be obligated to proceed with a civil rights action unless the
15 prisoner clearly wishes to do so. See 28 U.S.C. §§ 1915 & 1915A; 42 U.S.C. § 1997e; Bunn v.
16 Conley, 309 F.3d 1002, 1007 (7th Cir. 2002) (stating that courts should not recharacterize nature
17 of prisoner’s claim because PLRA and AEDPA created “pitfalls of different kinds for prisoners
18 using the wrong vehicle”).

19 Here, petitioner does not name the proper individuals as defendants in the caption of the
20 pleading, and although he provides some factual allegations as to a particular named individual,
21 he does not do so for every individual identified in the letter. In addition, he has not identified the
22 causes of action he pursues. Thus, the undersigned finds that the habeas petition is not amenable
23 to conversion to a civil rights complaint.

24 Moreover, because petitioner has filed no other cases in this district, it is unclear whether
25 petitioner is aware that even if he is granted leave to proceed in forma pauperis, he will be
26 required to pay the court’s filing fee.² See 28 U.S.C. §§ 1914(a), 1915(a). Thus, the undersigned

27 ² Plaintiffs in § 1983 actions are required to pay a filing fee of \$350.00 plus a \$50.00
28 administrative fee. If leave to file in forma pauperis is granted, petitioner will still be required to

1 must allow petitioner the opportunity to voluntarily dismiss this action or, if he wishes to proceed
2 with a civil rights action, he may file an amended civil rights complaint on the form provided.

3 If petitioner chooses to file an amended civil rights complaint, he must demonstrate how
4 the conditions about which he complains resulted in a deprivation of his constitutional rights. See
5 e.g., West v. Atkins, 487 U.S. 42, 48 (1988). Also, the amended complaint must allege in specific
6 terms how each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There
7 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection
8 between a defendant’s actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v.
9 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
10 1978). Furthermore, vague and conclusory allegations of official participation in civil rights
11 violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

12 Petitioner may not change the nature of this suit by alleging new, unrelated claims.³ See
13 Fed. R. Civ. P. 20(a)(2).

14 In addition, petitioner is informed that the court cannot refer to a prior pleading in order to
15 make the amended complaint complete. Local Rule 220 requires that an amended complaint be
16 complete in itself without reference to any prior pleading. This requirement exists because, as a
17 general rule, an amended complaint supersedes the original complaint. See Ramirez v. County of
18 San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint supersedes the
19 original, the latter being treated thereafter as non-existent.’” (internal citation omitted)). Once an

20 _____
21 pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma
22 pauperis are not required to pay the \$50.00 administrative fee.

23 ³ A plaintiff may properly assert multiple claims against a single defendant. Fed. Rule Civ. P. 18.
24 In addition, a plaintiff may join multiple defendants in one action where “any right to relief is
25 asserted against them jointly, severally, or in the alternative with respect to or arising out of the
26 same transaction, occurrence, or series of transactions and occurrences” and “any question of law
27 or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). Unrelated
28 claims against different defendants must be pursued in separate lawsuits. See George v. Smith,
507 F.3d 605, 607 (7th Cir. 2007). This rule is intended “not only to prevent the sort of morass [a
multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the
required filing fees -- for the Prison Litigation Reform Act limits to 3 the number of frivolous
suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C.
§ 1915(g).” George, 507 F.3d at 607.

1 amended complaint is filed, the original pleading no longer serves any function in the case.
2 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
3 of each defendant must be sufficiently alleged.

4 In accordance with the above, IT IS HEREBY ORDERED that:

- 5 1. The habeas petition is dismissed with leave to amend;
- 6 2. Within thirty days from the date of this order, petitioner shall complete the attached
7 Notice and submit the following documents to the court:

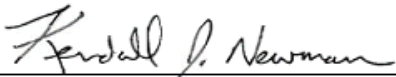
- 8 a. The completed Notice; and
- 9 b. An original and one copy of the Amended Complaint.

10 The amended complaint shall comply with the requirements of the Civil Rights Act, the Federal
11 Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also
12 bear the docket number assigned to this case and must be labeled "Amended Complaint."

13 Failure to file an amended complaint in accordance with this order will result in the
14 dismissal of this action.

- 15 5. The Clerk of the Court is directed to send petitioner the form for filing a civil rights
16 complaint by a prisoner.

17 Dated: June 21, 2018

18 
19 _____
20 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

21 /cw/turn1180.conv

22
23
24
25
26
27
28

