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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNY LEE BRIGGS,  
  
Plaintiff,  
  
v.  
  
D. BAUGHMAN,  
  
Defendants.

No. 2:18-cv-1822 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding in forma pauperis with an action for violation of civil rights under 42 U.S.C. § 1983. On October 25, 2018, the court screened plaintiff’s complaint, as the court is required to do under 28 U.S.C. § 1915A(a) and dismissed the complaint with leave to amend. Plaintiff has now filed an amended complaint.

Under 28 U.S.C. § 1915A(a), the court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

In his amended complaint, plaintiff seeks an order reducing bail to \$25,000. However, plaintiff is already committed to the California Department of Corrections and Rehabilitation and nothing suggests plaintiff is in anyway eligible for release on bail. Plaintiff also challenges the execution of his sentence asserting that he is being “unlawfully restrained.” However, when a

1 state prisoner challenges the legality of his custody and the relief he seeks is the determination of  
2 his entitlement to an earlier or immediate release, his sole federal remedy is a writ of habeas  
3 corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

4 For these reasons, plaintiff has not stated a claim upon which relief can be granted in his  
5 amended complaint. Considering the direction provided to plaintiff upon the dismissal of his  
6 original complaint as to how he might state a claim upon which relief can be granted in an  
7 amended complaint, and the contents of his amended complaint, granting plaintiff leave to amend  
8 a second time appears futile. Therefore, the court will recommend that the amended complaint be  
9 dismissed and this case be closed.

10 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district  
11 court judge to this case.

12 IT IS HEREBY RECOMMENDED that:

- 13 1. Plaintiff's amended complaint be dismissed; and
- 14 2. This case be closed.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after  
17 being served with these findings and recommendations, plaintiff may file written objections with  
18 the court. The document should be captioned "Objections to Magistrate Judge's Findings and  
19 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
20 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
21 1991).

22 Dated: April 10, 2019

23   
24 CAROLYN K. DELANEY  
25 UNITED STATES MAGISTRATE JUDGE