

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK LEE DEARWESTER,  
  
                                Petitioner,  
  
                  v.  
  
M.E. SPEARMAN, Warden,  
  
                                Respondent.

No. 2:18-cv-2703 KJN P

ORDER AND FINDINGS &  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Petitioner challenges prison conditions based on his alleged need for single-cell status.

As a general rule, a claim that challenges the fact or duration of a prisoner’s confinement should be addressed by filing a habeas corpus petition, while a claim that challenges the conditions of confinement should be addressed by filing a civil rights action. See Wolff v. McDonnell, 418 U.S. 539, 554 (1974); Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973); Ramirez v. Galaza, 334 F.3d 850, 858-59 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004).

////

1 In some circumstances, a district court may convert an improperly filed habeas petition  
2 into a civil rights complaint. See Nettles v. Grounds, 830 F.3d 922, 935-36 (9th Cir. 2016) (*en*  
3 *banc*). “If the complaint is amenable to conversion on its face, meaning that it names the correct  
4 defendants and seeks the correct relief, the court may re-characterize the petition so long as it  
5 warns the pro se litigant of the consequences of the conversion and provides an opportunity for  
6 the litigant to withdraw or amend his or her complaint.” Id. at 936 (quoting Glaus v. Anderson,  
7 408 F.3d 382 (7th Cir. 2005)).

8 Here, petitioner has not named the appropriate parties responsible for deciding petitioner’s  
9 cell status; documents appended to the petition reference a classification committee, suggesting  
10 multiple prison staff were involved. Petitioner names only the warden as respondent, and there is  
11 no indication that the warden was involved in assigning petitioner’s cell status.<sup>1</sup> In addition,  
12 while it appears petitioner seeks single cell status, it is unclear whether petitioner seeks other  
13 relief.

14 Finally, if petitioner chooses to proceed with a civil rights action, he will be required to  
15 pay the court’s \$350.00 filing fee, even if granted leave to proceed in forma pauperis, although he  
16 would be allowed to pay it in installments. See 28 U.S.C. §§ 1914(a), 1915(a).

---

17  
18 <sup>1</sup> The civil rights statute, 42 U.S.C. § 1983, requires that there be an actual connection or link  
19 between the actions of the defendants and the deprivation alleged to have been suffered by  
20 plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not  
21 intend § 1983 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362  
22 (1976) (no affirmative link between the incidents of police misconduct and the adoption of any  
23 plan or policy demonstrating their authorization or approval of such misconduct). “A person  
24 ‘subjects’ another to the deprivation of a constitutional right, within the meaning of § 1983, if he  
25 does an affirmative act, participates in another’s affirmative acts or omits to perform an act which  
26 he is legally required to do that causes the deprivation of which complaint is made.” Johnson v.  
27 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

28 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their  
employees under a theory of respondeat superior and, therefore, when a named defendant holds a  
supervisory position, the causal link between him and the claimed constitutional violation must  
be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979) (no liability  
where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th  
Cir. 1978) (no liability where there is no evidence of personal participation), cert. denied, 442  
U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of official  
personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266,  
268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal participation is  
insufficient).

1 For all of the above reasons, it is not appropriate to convert this action to a civil rights  
2 action.

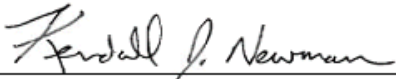
3 In accordance with the above, IT IS HEREBY ORDERED that:

- 4 1. Petitioner's motion to proceed in forma pauperis is granted;
- 5 2. The Clerk of the Court is directed to assign a district judge to this case; and

6 IT IS RECOMMENDED that petitioner's application for a writ of habeas corpus be  
7 dismissed without prejudice.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, any party may file written  
11 objections with the court and serve a copy on all parties. Such a document should be captioned  
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
13 objections shall be filed and served within fourteen days after service of the objections. The  
14 parties are advised that failure to file objections within the specified time may waive the right to  
15 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: October 16, 2018

17   
18 \_\_\_\_\_  
19 KENDALL J. NEWMAN  
20 UNITED STATES MAGISTRATE JUDGE

21 /dear2703.157  
22  
23  
24  
25  
26  
27  
28