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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DON ANGELO DAVIS,  
Plaintiff,  
v.  
RALPH DIAZ, et al.,  
Defendants.

No. 2:19-CV-0222-WBS-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s first amended complaint (ECF No. 23).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
2 with at least some degree of particularity overt acts by specific defendants which support the  
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

## 6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff Don Angelo Davis is an inmate at Pelican Bay State Prison in Crescent  
9 City, California. Plaintiff appears to allege that various prison officials are involved in a scheme  
10 to miscalculate the duration of his sentence. See ECF No. 23, pg. 5. None of the named  
11 defendants are referenced in plaintiff's allegations.

## 12 13 **II. DISCUSSION**

14 When a state prisoner challenges the legality of his custody and the relief he seeks  
15 is a determination that he is entitled to an earlier or immediate release, such a challenge is not  
16 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ  
17 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,  
18 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.  
19 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief  
20 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's  
21 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in  
22 imposition of a sanction affecting the overall length of confinement, such a claim is not  
23 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by  
24 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-  
25 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to  
26 malicious prosecution action which includes as an element a finding that the criminal proceeding  
27 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)  
28 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an

1 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding  
2 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and  
3 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)  
4 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is  
5 eligible for parole consideration not barred because changed procedures would hasten future  
6 parole consideration and not affect any earlier parole determination under the prior procedures).

7 Here, success on plaintiff's claims relating to miscalculation of his sentence would  
8 clearly imply the invalidity of the term currently being imposed. To the extent plaintiff's sentence  
9 has not been invalidated, recalculated, or otherwise overturned, plaintiff's claims are not  
10 cognizable in this civil action.

11 Plaintiff was granted leave to amend his original complaint but has failed to allege  
12 facts which establish a § 1983 claim. Plaintiff makes no factual reference to any of the defendants  
13 named in the amended complaint, nor does he explain how they are responsible for the  
14 deprivation of his rights. Plaintiff's amended complaint is devoid of facts, filled with legal jargon,  
15 and no clearer than his original complaint. Compare ECF No. 1 with ECF No. 23.

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**III. CONCLUSION**

Because it does not appear possible that the deficiencies identified herein can be cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

Based on the foregoing, the undersigned recommends that this action be dismissed in its entirety without further leave to amend for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 4, 2019



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DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE