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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	EDWARD LEE TURNER,	No. 2:19-cv-2080-EFB P
12	Petitioner,	
13	V.	ORDER AND FINDINGS AND RECOMMENDATIONS
14	RALPH DIAZ,	RECOMMENDATIONS
15	Respondent.	
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17	Petitioner is a state prisoner who, proceeding pro se, seeks a writ of habeas corpus	
18	pursuant to 28 U.S.C. § 2254. He has filed an application to proceed in forma pauperis (ECF No.	
19	5) which makes the required showing and is g	ranted. However, for the reasons stated below his
20	petition (ECF No. 1) does not state a viable federal habeas claim.	
21	I. <u>Legal Standards</u>	
22	The court must dismiss a habeas petition or portion thereof if the prisoner raises claims	
23	that are legally "frivolous or malicious" or fail to state a basis on which habeas relief may be	
24	granted. 28 U.S.C. § 1915A(b)(1),(2). The co	ourt must dismiss a habeas petition "[i]f it plainly
25	appears from the petition and any attached exl	hibits that the petitioner is not entitled to relief[.]"
26	Rule 4, Rules Governing Section 2254 Cases.	
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II. <u>Analysis</u>

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2	Petitioner raises only a single ground in his petition: that, in 2005 and in this district, he	
2	settled a case for one million dollars and there is an "issue regarding settlement payment." ECF	
4	No. 1 at 4. Since he is not attacking his conviction, a habeas petition is not the appropriate	
5	vehicle for this claim. See 28 U.S.C. § 2254(a) ("The Supreme Court, a Justice thereof, a circuit	
6	judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a	
7	person in custody pursuant to the judgment of a State court only on the ground that he is in	
8	custody in violation of the Constitution or laws or treaties of the United States.") (emphasis	
9	added).	
10	The court also declines to convert this action to a section 1983 action. First, plaintiff has	
11	given no explicit indication that he would be amenable to such conversion if his habeas petition	
12	were deemed improper. ¹ Second, a separate section 1983 action is not the proper vehicle for	
13	enforcing a settlement agreement reached in a different case. ² See, e.g., Dorrough v. Gonzalez,	
14	No. 1:08-cv-00634 AWI DLB PC, 2009 WL 3300266, 2009 U.S. Dist. LEXIS 95671, *9 (E.D.	
15	Cal. Oct. 13, 2009) ("Plaintiff's filing of a Section 1983 action is not the proper vehicle for	
16	enforcement of a settlement agreement reached in a different federal case.").	
17	III. <u>Conclusion</u>	
18	Accordingly, it is ORDERED that:	
19	1. Petitioner's application to proceed in forma pauperis (ECF No. 5) is GRANTED; and	
20	2. The Clerk of Court shall randomly assign a United States District Judge to this case.	
21	Further, it is HEREBY RECOMMENDED that the petition (ECF No. 1) be DISMISSED	
22	for failure to state a cognizable federal claim.	
23	These findings and recommendations are submitted to the United States District Judge	
24	assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days	
25	after being served with these findings and recommendations, any party may file written	
26	¹ The court notes that the filing fee for a section 1983 case is far higher than the filing fee	
27	for a habeas petition.	
28	2 Petitioner has not identified the case in which the settlement was reached. 2	

1	objections with the court and serve a copy on all parties. Such a document should be captioned
2	"Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
3	within the specified time may waive the right to appeal the District Court's order. Turner v.
4	Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In
5	his objections petitioner may address whether a certificate of appealability should issue in the
6	event he files an appeal of the judgment in this case. See Rule 11, Rules Governing § 2254 Cases
7	(the district court must issue or deny a certificate of appealability when it enters a final order
8	adverse to the applicant).
9	DATED: April 24, 2020.
10	EDMUND F. BRENNAN
11	UNITED STATES MAGISTRATE JUDGE
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