

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HERIBERTO CASTRO-GUTIERREZ,

No. 2:21-cv-01391 KJM DB P

Plaintiff,

## ORDER

DORIS L. SHOCKLEY,

Defendant.

Plaintiff is a state prisoner who was proceeding pro se with a civil rights action under 42 U.S.C. § 1983. On October 24, 2021, plaintiff filed a petition for a writ of habeas corpus and a motion to proceed in forma pauperis in this case.<sup>1</sup> However, in an order filed October 13, 2021, the court dismissed this case. Plaintiff was advised that his claims should be brought, if at all, in a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Because the court closed the present case, plaintiff must file a new action.

Accordingly, the Clerk of the Court is directed to open a new case, assign the present district and magistrate judges to that case, and transfer plaintiff's October 24 habeas petition and motion to proceed in forma pauperis to that new case.

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<sup>1</sup> Under the “mailbox rule,” the court considers the date a prisoner turns over his filing to prison authorities for mailing as the filing date. *See Houston v. Lack*, 487 U.S. 266, 270 (1988).

1 IT IS SO ORDERED.  
2 DATED: November 16, 2021.  
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5 CHIEF UNITED STATES DISTRICT JUDGE  
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