

1 traditional function of the writ is to secure release from illegal custody.” Preiser v. Rodriguez,
2 411 U.S. 475, 484 (1973). “Habeas corpus proceedings are the proper mechanism for a prisoner
3 to challenge the ‘legality or duration’ of confinement. A civil rights action ... is the proper
4 method of challenging ‘conditions of ... confinement.’” Badea v. Cox, 931 F.2d 573, 574 (9th
5 Cir. 1991) (quoting Preiser, 411 U.S. at 484, 498-99). Petitioner does not challenge the legality
6 or duration of his custody. Petitioner’s challenge to the conditions of his confinement should be
7 raised, if at all, in a civil rights action.

8 The court may, in appropriate circumstances, convert a habeas petition to a civil rights
9 action under 42 U.S.C. § 1983. Nettles v. Grounds, 830 F.3d 922, 936 (9th Cir. 2016). This
10 court finds it would be inappropriate to convert this case because there are several significant
11 differences between a habeas corpus proceeding and a civil rights action. For instance, the filing
12 fee for a habeas petition is \$5, and if leave to proceed in forma pauperis is granted, the fee is
13 forgiven. For civil rights cases, however, the fee is \$400 and under the Prisoner Litigation
14 Reform Act the inmate is required to pay \$350, even if granted in forma pauperis status, by way
15 of deductions from income to the inmate’s trust account. See 28 U.S.C. 1915(b)(1). An inmate
16 who might be willing to file a habeas petition for which he or she would not have to pay a filing
17 fee might feel otherwise about a civil rights complaint for which the fee would be deducted from
18 income to his or her account. Also, a civil rights complaint which is dismissed as malicious,
19 frivolous, or for failure to state a claim would count as a "strike" under 28 U.S.C. § 1915(g),
20 which is not true for habeas cases. Based on the differences between habeas and civil rights
21 cases, rather than construe the petition as a civil rights action, this court will recommend
22 dismissal without prejudice so that petitioner may assert claims under 42 U.S.C. § 1983 in a new
23 case, if he chooses.


24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Petitioner’s motion to proceed in forma pauperis (ECF No. 2) is denied as moot; and
- 26 2. The Clerk of the Court shall randomly assign a district judge to this case.

27 Further, IT IS RECOMMENDED that this case be dismissed without prejudice to its
28 renewal as civil rights action under 42 U.S.C. § 1983.

1 These findings and recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
3 being served with these findings and recommendations, petitioner may file written objections
4 with the court. The document should be captioned “Objections to Magistrate Judge's Findings and
5 Recommendations.” Petitioner is advised that failure to file objections within the specified time
6 may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d
7 1153 (9th Cir. 1991).

8 Dated: January 11, 2023

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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