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United States District Court
For the Northern District of California

E-Filed 11/1/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RUBEN A. ROMERO,
Petitioner,

No. C 10-4817 RS (PR)

ORDER OF DISMISSAL

v.

FRANCISCO JAQUEZ,
Respondent.

This federal action was filed as a petition for writ of habeas corpus. Petitioner, however, admits that this action does not challenge his conviction or the length of his sentence. A review of the petition confirms this, as petitioner sets forth claims regarding administrative grievances related to the recovery of personal property. If petitioner prevails here it will not affect the length of his incarceration. This means this his claim is not the proper subject of a habeas action, but must be brought as a civil rights case under 42 U.S.C. § 1983. See *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (habeas corpus action proper mechanism for challenging “legality or duration” of confinement; civil rights action proper method for challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891–92

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1 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms
2 and conditions of confinement must be brought in civil rights complaint).

3 In an appropriate case a habeas petition may be construed as a section 1983 complaint.
4 *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Although the Court may construe a
5 habeas petition as a civil rights action, it is not required to do so. Since the time when the
6 *Wilwording* case was decided there have been significant changes in the law. For instance,
7 the filing fee for a habeas petition is five dollars; for civil rights cases, however, the fee is
8 now \$350 and under the Prisoner Litigation Reform Act the prisoner is required to pay it,
9 even if granted *in forma pauperis* status, by way of deductions from income to the prisoner's
10 trust account. *See* 28 U.S.C. § 1915(b). A prisoner who might be willing to file a habeas
11 petition for which he or she would not have to pay a filing fee might feel otherwise about a
12 civil rights complaint for which the \$350 fee would be deducted from income to his or her
13 prisoner account. Also, a civil rights complaint which is dismissed as malicious, frivolous, or
14 for failure to state a claim would count as a "strike" under 28 U.S.C. § 1915(g), which is not
15 true for habeas cases.

16 In view of these potential pitfalls for petitioner if the Court were to construe the
17 petition as a civil rights complaint, the case will be dismissed without prejudice to petitioner
18 filing a civil rights action if he wishes to do so in light of the above.

19 The Clerk shall enter judgment in favor of respondent, and close the file.

20 **IT IS SO ORDERED.**

21 DATED: October 28, 2010


RICHARD SEEBORG
United States District Judge