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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,

No. C 11-0866 WHA (PR)

Plaintiff,

ORDER OF DISMISSAL

vs.

THE UNITED STATES; EDMUND
JERRY BROWN; ROBERT MOSEY;
ERIC HOLDER; BARAK OBAMA;

Defendants.

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. 1983.

ANALYSIS

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the

1 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
2 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
3 upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
4 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
5 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
6 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
7 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
8 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
9 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
10 at 1974.

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
12 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
13 that the alleged deprivation was committed by a person acting under the color of state law.
14 *West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **B. LEGAL CLAIMS**

16 Plaintiff's makes a variety of allegations that are difficult to understand. The crux of his
17 complaint is that as a consequence of his conviction in state court in 1987, he has been
18 imprisoned and thereby suffered forcible detention, violations of his privacy, and other
19 infringements on his rights. He complains that the United States of America, the President of
20 the United States, and the United States Attorney General and one of his deputies have failed to
21 intervene and order his release from prison. He complains that the California Attorney General
22 is responsible for his imprisonment. He requests, among other things, that his conviction be
23 expunged.

24 Any claim by a prisoner attacking the fact or duration of his confinement must be
25 brought under the habeas sections of Title 28 of the United States Code. *Calderon v. Ashmus*,
26 523 U.S. 740, 747 (1998). As plaintiff's claims challenge the validity of his state court
27 conviction, they must be brought under Title 28 of the United States Code, Section 2254, not in
28 a civil rights action. This case will be dismissed without prejudice to plaintiff doing so.

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CONCLUSION

For the reasons set out above, this case is **DISMISSED** without prejudice to plaintiff's raising his claims in a petition for a writ of habeas corpus.

The clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: March 24 , 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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