

United States District Court  
For the Northern District of California

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

JOSE U. PADILLA, et al,	)	No. C 12-5117 JSW (PR)
	)	
Petitioner,	)	<b>ORDER OF DISMISSAL</b>
	)	
v.	)	
	)	
UNITED STATES	)	
GOVERNMENT, et al,	)	(Docket No. 3)
	)	
Respondents.	)	
_____	)	

Petitioner, a detainee at the Contra Costa County Jail, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion seeking leave to proceed *in forma pauperis*.

Although the petition is largely incomprehensible, it is apparent that Petitioner’s claims do not involve the fact or duration of his confinement, hence are not the proper subject of a habeas action. *See Moran v. Sondalle*, 218 F.3d 647, 650-52 (7th Cir. 2000); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint).


A district court may construe a habeas petition attacking conditions of confinement as a civil rights action under 42 U.S.C. § 1983. *See Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). However, although the court may construe a habeas petition as a civil rights action, it is not required to do so. Since the *Wilwording* case was decided there have been significant changes in the law. For instance, the filing fee for a habeas petition

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is five dollars, and if leave to proceed in forma pauperis is granted, the fee is forgiven. For civil rights cases, however, the fee is \$350.00 and under the Prisoner Litigation Reform Act the prisoner is required to pay it, even if granted in forma pauperis status, by way of deductions from his or her prisoner account. In view of this, this case is DISMISSED without prejudice to petitioner filing a civil rights action if he wishes to do so in light of the above. However, if Petitioner chooses to file such a complaint, he must clearly state the nature of his claims and identify against whom his complaints are made.

Petitioner's motion to proceed in forma pauperis (docket no. 3) is GRANTED.  
The Clerk shall close the file and enter judgment.  
IT IS SO ORDERED.

DATED: November 5, 2012

  
\_\_\_\_\_  
JEFFREY S. WHITE  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 JOSE ULYSSESE PADILLA JR,  
6  
7 Plaintiff,

Case Number: CV12-05117 JSW

**CERTIFICATE OF SERVICE**

8 v.


9 US GOVERNMENT et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on November 5, 2012, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17 Jose Ulysses Padilla  
18 901 Court Street  
19 #CC12EJ405  
20 Martinez, CA 94553

21 Dated: November 5, 2012

  
22 Richard W. Wieking, Clerk  
23 By: Jennifer Ottolini, Deputy Clerk  
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