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\*E-Filed 5/27/14\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JESUS CHIPREZ,

No. C 14-0439 RS (PR)

Petitioner,

**ORDER OF DISMISSAL**

v.

N. GROUNDS,

Respondent.

\_\_\_\_\_ /  
This federal action was filed as a petition for writ of habeas corpus, that is, as a challenge to the lawfulness or duration of petitioner’s incarceration. A review of the petition, however, shows that petitioner sets forth claims regarding the loss of property, rather than challenging the lawfulness or duration of his confinement. Therefore, if he prevails here it will not affect necessarily the length of his incarceration. This means that 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 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges

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For the Northern District of California

1 to terms and conditions of confinement must be brought in civil rights complaint).

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

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

18 Petitioner's motion to proceed *in forma pauperis* (Docket No. 3) is GRANTED. The  
19 Clerk shall terminate Docket No. 3, enter judgment in favor of respondents, and close the  
20 file.

21 **IT IS SO ORDERED.**

22 DATED: May 27, 2014

  
23 RICHARD SEEBORG  
United States District Judge

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