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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAEKUBIAN ALEXANDER BARROW,

Plaintiff,

No. C 14-2572 EDL (PR)

v.

ORDER OF DISMISSAL

PEOPLE OF THE STATE OF CALIFORNIA, et al.,

Defendants.

Plaintiff, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis is granted in a separate order. For the reasons stated below, plaintiff's complaint is DISMISSED.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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. See 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

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

1 **B. Legal Claims**

2 In his complaint, plaintiff raises claims related to his underlying criminal conviction.
3 Specifically, plaintiff raises a claim of ineffective assistance of counsel and argues that the
4 police reports were false. Plaintiff also claims that some of the witnesses committed
5 perjury.

6 “Federal law opens two main avenues to relief on complaints related to
7 imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the
8 Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to
9 the lawfulness of confinement or to particulars affecting its duration are the province of
10 habeas corpus.” *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting *Muhammad v.*
11 *Close*, 540 U.S. 749, 750 (2004)). Habeas is the “exclusive remedy” for the prisoner who
12 seeks “immediate or speedier release” from confinement. *Skinner v. Switzer*, 131 S. Ct.
13 1289, 1293 (2011) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). “Where the
14 prisoner’s claim would not ‘necessarily spell speedier release,’ however, suit may be
15 brought under § 1983.” *Skinner*, 131 S. Ct. at 1293 (quoting *Wilkinson*, 544 U.S. at 82).
16 As a consequence, challenges to prison conditions have traditionally been cognizable only
17 via § 1983, while challenges implicating the fact or duration of confinement must be brought
18 through a habeas petition. *Docken v. Chase*, 393 F.3d 1024, 1026 (9th Cir. 2004).

19 Here, plaintiff is not challenging the conditions of his confinement. He is attacking
20 the lawfulness of his confinement altogether. Because plaintiff’s claims, if successful, could
21 affect the duration of his custody, and the determination of the claims could result in
22 entitlement to an earlier release, plaintiff’s claims must be brought in a habeas corpus
23 proceeding. See *Ramirez v. Galaza*, 334 F.3d 850, 858-59 (9th Cir. 2003) (implying that a
24 claim, which if successful would “necessarily” or “likely” accelerate the prisoner’s release on
25 parole, must be brought in a habeas petition).

26 **CONCLUSION**

27 Accordingly, this action is DISMISSED without prejudice to plaintiff’s re-filing as a
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1 petition for habeas corpus pursuant to 28 U.S.C. § 2254 after he has completed exhausting
2 his state remedies. The Clerk shall terminate all pending motions and close the file.

3 **IT IS SO ORDERED.**

4 Dated: August 26, 2014.


ELIZABETH D. LAPORTE
United States Chief Magistrate Judge

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