

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SONNY D. BARGER,  
aka GARY FRANCIS FISHER,  
aka GARY DALE BARGER,  
Petitioner,  
v.  
DIRECTOR OF OPS OF CDCR,  
Respondent.

Case No. [17-cv-00907-WHO](#) (PR)  
**ORDER OF DISMISSAL**  
Dkt. No. 2

This federal action was filed as a petition for writ of habeas corpus under 28 U.S.C. § 2254, that is, as a challenge to the lawfulness or duration of petitioner Sonny D. Barger’s incarceration. A review of the petition, however, shows that Barger’s intent is to challenge the conditions of his confinement, specifically the adequacy of medical care in prison.<sup>1</sup> Therefore, if he prevails here it will not necessarily affect 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 to terms and conditions of

<sup>1</sup> If Barger wants to challenge in federal court the validity of his state conviction, he should file a habeas petition in the district of conviction, which here is the Eastern District.

1 confinement must be brought in civil rights complaint).

2 In an appropriate case a habeas petition may be construed as a section 1983  
3 complaint. *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Although the Court may  
4 construe a habeas petition as a civil rights action, it is not required to do so. Since the time  
5 when the *Wilwording* case was decided there have been significant changes in the law. For  
6 instance, the filing fee for a habeas petition is five dollars; for civil rights cases, however,  
7 the fee is now \$400 (\$350 if IFP status is granted) and under the Prisoner Litigation  
8 Reform Act the prisoner is required to pay it, even if granted IFP status, by way of  
9 deductions from income to the prisoner's trust account. *See* 28 U.S.C. § 1915(b). A  
10 prisoner who might be willing to file a habeas petition for which he or she would not have  
11 to pay a filing fee might feel otherwise about a civil rights complaint for which the \$400  
12 fee would be deducted from income to his or her prisoner account. Also, a civil rights  
13 complaint which is dismissed as malicious, frivolous, or for failure to state a claim would  
14 count as a "strike" under 28 U.S.C. § 1915(g), which is not true for habeas cases.

15 In view of these potential pitfalls for Barger if the Court were to construe the  
16 petition as a civil rights complaint, this federal action is DISMISSED without prejudice to  
17 his filing a civil rights action if he wishes to do so in light of the above. **Because he**  
18 **challenges the conditions of confinement in Kern County, where he is housed, he**  
19 **should file such civil rights action in the Eastern District of California.**

20 Barger's motion to proceed IFP (Docket No. 2) is GRANTED.

21 The Clerk shall terminate Docket No. 2, enter judgment in favor of respondent, and  
22 close the file.

23 **IT IS SO ORDERED.**

24 **Dated:** February 24, 2017

25   
26 WILLIAM H. ORRICK  
27 United States District Judge  
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