

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR J. BRAVO,

No. C 11-01900 CW (PR)

Plaintiff,

ORDER OF DISMISSAL; DIRECTING
COURT'S FINANCIAL OFFICE TO
REFUND FILING FEE TO PLAINTIFF;
TERMINATING ALL PENDING MOTIONS

v.

JERRY BROWN, Governor, C. LUSCH,
Hospital Director,Defendants.

Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. He has paid the \$350.00 filing fee. Plaintiff's complaint is now before the Court for review pursuant to 28 U.S.C. § 1915A.

BACKGROUND

In his complaint and other papers filed in the instant matter, Plaintiff alleges that he is unlawfully confined in state prison. Specifically, Plaintiff alleges that following the expiration of his prison sentence in February 2009, the State of California has refused to release him, and he currently is being held against his will in the prison hospital at Salinas Valley State Prison. Plaintiff seeks injunctive relief in the form of immediate release from prison.

DISCUSSION

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. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable

1 claims and dismiss any claims that are frivolous, malicious, fail
2 to state a claim upon which relief may be granted or seek monetary
3 relief from a defendant who is immune from such relief. Id.
4 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
6 1988).

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

13 Plaintiff's allegations do not state a claim for relief under
14 § 1983. Specifically, Plaintiff's request that the Court compel
15 state officials to release him from prison is not cognizable in a
16 civil rights action because the request is premised upon a
17 challenge to the fact or duration of Plaintiff's confinement.
18 "'Federal law opens two main avenues to relief on complaints
19 related to imprisonment: a petition for habeas corpus, 28 U.S.C. §
20 2254, and a complaint under the Civil Rights Act of 1871, Rev.
21 Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the
22 lawfulness of confinement or to particulars affecting its duration
23 are the province of habeas corpus.'" Hill v. McDonough, 547 U.S.
24 573, 579 (2006) (quoting Muhammad v. Close, 540 U.S. 749, 750
25 (2004)). Thus, to the extent a prisoner maintains he is entitled
26 to "immediate or speedier release" from confinement, such a claim
27 may be asserted only in a petition for a writ of habeas corpus.
28 See Skinner v. Switzer, 131 S. Ct. 1289, 1293 (2011)(internal

1 citation and quotation omitted).

2 Here, Plaintiff has filed a civil rights complaint but he
3 seeks relief that can be granted only by way of habeas corpus. A
4 civil rights complaint seeking habeas relief should be dismissed
5 without prejudice to bringing it as a petition for writ of habeas
6 corpus. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th
7 Cir. 1995). Accordingly, the instant action is hereby DISMISSED
8 without prejudice to Plaintiff's filing a federal habeas petition
9 challenging the validity of his confinement once he has exhausted
10 state remedies as to all claims he seeks to raise in federal
11 court.¹

12 Because the Court has determined that the instant complaint
13 cannot proceed as a civil rights action but, instead, must be
14 dismissed because Plaintiff seeks habeas corpus relief, the court's
15 Financial Office is hereby DIRECTED to refund to Plaintiff the
16 \$350.00 filing fee paid by Plaintiff in this matter.

17 The Clerk of the Court shall enter judgment, close the file,
18 and terminate any pending motions.

19 IT IS SO ORDERED.

20 Dated: 6/10/2011



21 CLAUDIA WILKEN
22 UNITED STATES DISTRICT JUDGE
23
24

25 ¹Individuals in state custody who wish to challenge in federal
26 habeas proceedings either the fact or length of their confinement are
27 first required to exhaust state judicial remedies by presenting the
28 highest state court available with a fair opportunity to rule on the
merits of each and every claim they seek to raise in federal court.
See 28 U.S.C. § 2254(b),(c)); Rose v. Lundy, 455 U.S. 509, 515-16
(1982).