

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

RAEKUBIAN A. BARROW,

No. C 13-3301 SBA (PR)

Plaintiff,

**ORDER OF DISMISSAL WITHOUT  
PREJUDICE**

V.

WARDEN KEVIN CHAPPELL, et al.,

## Defendants.

Plaintiff filed the present pro se prisoner complaint under 42 U.S.C. § 1983. His complaint challenges his detention, and he requests to "be released from prison NOW." (Compl. at 4 (emphasis in original).) In addition to relief in the form of his release from prison, Plaintiff's complaint seeks relief due to alleged constitutional violations at trial. He also requests leave to proceed in forma pauperis.

## **DISCUSSION**

## I. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek 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 which 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 id. at 1915A(b)(1), (2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
(1) that a violation of a right secured by the Constitution or laws of the United States was violated,

1 and (2) that the alleged deprivation was committed by a person acting under the color of state law.  
2 See West v. Atkins, 487 U.S. 42, 48 (1988).

3 **II. Legal Claim**

4 In this case, Plaintiff has improperly filed his claim as a civil rights action. Traditionally,  
5 challenges to prison conditions have been cognizable only via § 1983, while challenges implicating  
6 the fact or duration of confinement must be brought through a habeas petition. Docken v. Chase,  
7 393 F.3d 1024, 1026 (9th Cir. 2004).

8 Any claim by a prisoner attacking the validity or duration of his confinement must be  
9 brought under the habeas sections of Title 28 of the United States Code. Calderon v. Ashmus, 523  
10 U.S. 740, 747 (1998); Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). A prisoner must bring a  
11 habeas petition if the nature of his claim is such that it would necessarily imply the invalidity of his  
12 conviction or continuing confinement. Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997) (§  
13 1983 claim).

14 A district court may construe a habeas petition by a prisoner attacking the conditions of his  
15 confinement as a civil rights action under 42 U.S.C. § 1983. Wilwording v. Swenson, 404 U.S. 249,  
16 251 (1971). The opposite is not true, however: a civil rights complaint seeking habeas relief should  
17 be dismissed without prejudice to bringing it as a petition for writ of habeas corpus. Trimble v. City  
18 of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

19 In this case, Plaintiff's allegations attack the duration of his confinement rather than the  
20 conditions of his confinement. When a state prisoner's § 1983 suit implicates the length of his or her  
21 incarceration, the complaint must be dismissed unless the plaintiff can demonstrate that he has  
22 succeeded in getting the duration of the sentence changed in another forum, for instance by  
23 succeeding with a state or federal habeas petition. This Plaintiff has not done; therefore, he has  
24 failed to state a cognizable claim under section 1983. Accordingly, the instant complaint is  
25 DISMISSED without prejudice.

26 **CONCLUSION**

27 The Court concludes that Plaintiff's complaint fails to challenge the conditions of his  
28 confinement. His claims attack the duration of his confinement and are more appropriately

1 addressed in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Therefore, the  
2 complaint is DISMISSED without prejudice to Plaintiff filing a habeas action. The Court has  
3 rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case.

4 The Clerk of the Court shall terminate all pending motions as moot, including his motion for  
5 appointment of counsel (Docket No. 7), and close the file.

6 The Clerk shall send Plaintiff a blank habeas corpus petition form along with his copy of this  
7 Order.

8 IT IS SO ORDERED.

9 DATED: 8/26/2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge