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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN DONALD KELSO  
  
Petitioner,  
  
vs.  
  
DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF CORRECTIONS,  
  
Respondent.

Civil No. 09cv2569-DMS (CAB)

**ORDER DISMISSING PETITION  
FOR A WRIT OF HABEAS CORPUS  
WITHOUT PREJUDICE**

Petitioner, proceeding pro se, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, but has neither paid the filing fee nor filed a motion to proceed in forma pauperis. Although Petitioner indicates he is challenging a conviction from the Solano County Superior Court, he states that he is a civil detainee. Moreover, his claims appear to challenge the conditions of his confinement rather than the fact or duration of his confinement. The Petition is subject to dismissal because Petitioner has not satisfied the filing fee requirement, and because the Southern District of California is not the proper venue for any of Petitioner’s claims.

**FAILURE TO SATISFY FILING FEE REQUIREMENT**

This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, and the Court therefore **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254.

**VENUE**

To the extent Petitioner presents claims regarding problems he is facing in prison, such

1 claims are not cognizable on habeas because they do not challenge the constitutional validity or  
2 duration of Petitioner's confinement. See 28 U.S.C. § 2254(a); Preiser v. Rodriguez, 411 U.S.  
3 475, 500 (1973); Heck v. Humphrey, 512 U.S. 477, 480-85 (1994). "Section 2254 applies only  
4 to collateral attacks on state court judgments." McGuire v. Blubaum, 376 F. Supp. 284, 285 (D.  
5 Ariz. 1974). In no way does Petitioner claim his state court conviction or civil commitment  
6 proceedings resulted in an incarceration which violates the Constitution or laws or treaties of the  
7 United States. Even assuming Petitioner is presenting, or could present, such a challenge, the  
8 Southern District of California is the not proper venue for his habeas claims.

9 A petition for writ of habeas corpus may be filed in the United States District Court of  
10 either the judicial district in which the petitioner is presently confined or the judicial district in  
11 which he was convicted and sentenced. See 28 U.S.C. § 2241(d); Braden v. 30th Judicial Circuit  
12 Court, 410 U.S. 484, 497 (1973). Petitioner is currently confined at Patton State Hospital, in  
13 Patton California. That institution is located in San Bernardino County, which is within the  
14 jurisdictional boundaries of the Central District of California, Eastern Division. 28 U.S.C.  
15 § 84(c)(1). His conviction or commitment arose in Solano County Superior Court, which is  
16 within the jurisdictional boundaries of the Eastern District of California. 28 U.S.C. § 84(b).  
17 Thus, habeas jurisdiction does not exist in the Southern District of California.

18 Moreover, it appears that Petitioner may be presenting challenges to the conditions of his  
19 confinement rather than to the fact or duration of confinement. Challenges to the fact or duration  
20 of confinement are brought by petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254;  
21 challenges to conditions of confinement are brought pursuant to the Civil Rights Act, 42 U.S.C.  
22 § 1983. See Preiser, 411 U.S. at 488-500. When a state prisoner is challenging the very fact or  
23 duration of his physical imprisonment, and the relief he seeks is a determination that he is  
24 entitled to immediate release or a speedier release from that imprisonment, his sole federal  
25 remedy is a writ of habeas corpus. Id. at 500. On the other hand, a § 1983 action is a proper  
26 remedy for a state prisoner who is making a constitutional challenge to the conditions of his  
27 prison life, but not to the fact or length of his custody. Id. at 499; McIntosh v. United States  
28 Parole Comm'n, 115 F.3d 809, 811-12 (10th Cir. 1997). To the extent Petitioner challenges the

1 conditions of his prison life, but not the fact or length of his custody, Petitioner has not stated  
2 a cognizable habeas claim pursuant to § 2254.

3 In addition, to the extent Petitioner is challenging the conditions of his confinement  
4 pursuant to 42 U.S.C. § 1983, this Court lacks jurisdiction. “A civil action wherein jurisdiction  
5 is not founded solely on diversity of citizenship may, except as otherwise provided by law, be  
6 brought only in (1) a judicial district where any defendant resides, if all defendants reside in the  
7 same State, (2) a judicial district in which a substantial part of the events or omissions giving rise  
8 to the claim occurred, or a substantial part of property that is the subject of the action is situated,  
9 or (3) a judicial district in which any defendant may be found, if there is no district in which the  
10 action may otherwise be brought.” 28 U.S.C. § 1391(b); Costlow, 790 F.2d at 1488; Decker  
11 Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 842 (9th Cir. 1986).

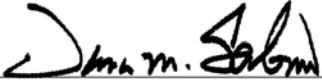
12 Here, all the events which give rise to Plaintiff’s claims regarding the conditions of his  
13 confinement occurred at Patton State Hospital, which is located in the Central District of  
14 California, Eastern Division, and not in the Southern District. Petitioner has identified no  
15 defendants who reside in the Southern District and no events which occurred here. Therefore,  
16 the Southern District lacks jurisdiction over Petitioner’s conditions of confinement claims.

17 **CONCLUSION**

18 Based on the foregoing, the Court **DISMISSES** this case without prejudice for failure to  
19 satisfy the filing fee requirement and for lack of jurisdiction. The dismissal is without prejudice  
20 to Petitioner to file his habeas petition, or his complaint regarding the conditions of his  
21 confinement, in a District with proper jurisdiction. **IT IS HEREBY ADJUDGED THAT**  
22 **JUDGMENT BE ENTERED DISMISSING THE PETITION AND THE ACTION.**

23 **IT IS SO ORDERED.**

24 DATED: November 19, 2009

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26 \_\_\_\_\_  
27 HON. DANA M. SABRAW  
28 United States District Judge

28 CC: ALL PARTIES