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

BENNIE MATHIS,

Petitioner,

v.

DOMINGO URIBE, JR., Warden, et al.,

Respondents.

Civil No. 10cv0035-WQH (BLM)

ORDER:

**(1) GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS;**

**(2) CONSTRUING ACTION AS
A HABEAS PETITION BROUGHT
PURSUANT TO 28 U.S.C. § 2254; AND,**

**(3) DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, together with a request to proceed in forma pauperis. Petitioner alleges that his footlocker was confiscated when he was placed in administrative segregation, and that the charges were dismissed about one month later, but when he was released back into the general population and his personal property was returned to him, his footlocker, which he had possessed for ten years, was not returned, ostensibly because it violated prison regulations against non-see through containers, but in reality as a punishment. (Pet. at 6; Pet. Ex. B.) Petitioner seeks a declaratory judgment stating that his Fourteenth Amendment right to due process and his Eighth Amendment right to be free from cruel and

1 unusual punishment were violated by the confiscation of his footlocker, and requests an
2 injunction requiring the return of the footlocker. (Pet. at 7; Pet. Ex. B.)

3 **MOTION TO PROCEED IN FORMA PAUPERIS**

4 Based on the Motion to proceed in forma pauperis and accompanying affidavit, the Court
5 **GRANTS** Petitioner’s application to proceed in forma pauperis, and allows Petitioner to
6 prosecute the above-referenced action as a poor person without being required to prepay fees or
7 costs and without being required to post security. The Clerk of the Court shall file the Petition
8 for a Writ of Habeas Corpus without prepayment of the filing fee.

9 **PROPER FORM OF ACTION**

10 Petitioner filed this action seeking habeas relief under 28 U.S.C. § 2241. Because
11 Petitioner is a state prisoner in custody pursuant to a state court judgment, he may not proceed
12 under 28 U.S.C. § 2241, but may only seek federal habeas relief pursuant to 28 U.S.C. § 2254.
13 White v. Lambert, 370 F.3d 1002, 1005-08 (9th Cir. 2004). However, Petitioner’s claim is one
14 properly brought in a civil rights Complaint pursuant to 42 U.S.C. § 1983, rather than a habeas
15 action, in that Petitioner challenges the conditions of his confinement, and does not challenge
16 the fact or duration of his confinement or seek an immediate or speedier release from custody,
17 but merely requests the return of his property.

18 In Preiser v. Rodriguez, 411 U.S. 475 (1973), the Court considered the potential overlap
19 between federal habeas actions under 28 U.S.C. § 2254 and challenges to the conditions of
20 confinement pursuant to 42 U.S.C. § 1983. The Court held that habeas is the exclusive remedy
21 for a state prisoner challenging the fact or duration of his confinement and the relief he seeks is
22 a determination that he is entitled to immediate release or a speedier release from that
23 confinement, even though the claim may also come within the literal terms of section 1983. Id.
24 at 488-500. On the other hand, a section 1983 action is a proper avenue for a state prisoner who
25 is making a constitutional challenge to the conditions of his prison life, but not to the fact or
26 length of his custody. Id. at 499.

27 The Supreme Court has therefore concluded that state prisoners must use habeas corpus
28 “when they seek to invalidate the duration of their confinement – either directly through an

1 injunction compelling speedier release or indirectly through a judicial determination that
2 necessarily implies the unlawfulness of the State’s custody,” Wilkinson v. Dotson, 544 U.S. 74,
3 81 (2005), and that claims which, if successful, would not entitle Petitioner to release from
4 custody, are cognizable under section 1983. Edwards v. Balisok, 520 U.S. 641, 646-48 (1997);
5 see also Mayle v. Felix, 545 U.S. 644. 671 n.4 (2005) (“the single, defining feature setting
6 habeas cases apart from other tort claims against the State is that they ‘necessarily demonsrat(e)
7 the invalidity of the conviction.’”) (quoting Heck v. Humphrey, 512 U.S. 477, 481-82 (1994).)
8 In Edwards v. Balisok the Court applied Heck to find that habeas was the sole federal vehicle
9 available for a state prisoner’s constitutional challenge to the procedures used in a disciplinary
10 hearing which resulted in the loss of custody credits where the claim would, if proven,
11 “necessarily imply the invalidity of the deprivation” of the custody credits. Edwards, 520 U.S.
12 at 646-48. The Court found, however, that a prisoner’s claim for an injunction barring future
13 unconstitutional procedures did not fall within federal habeas. Id. at 648. Petitioner here seeks
14 prospective injunctive relief seeking the return of his property, and there is no indication that the
15 length of his custody is in any way implicated.

16 Because Petitioner is not seeking immediate or speedier release from custody, but is
17 challenging the conditions of his confinement, and his claim is not barred by Heck, his claim is
18 properly brought in a civil rights action pursuant to 42 U.S.C. § 1983. The Court has discretion
19 to construe the Petition as a civil rights Complaint. See Willwording v. Swenson, 404 U.S. 249,
20 251 (1971) (holding that district courts have discretion to construe a habeas petition attacking
21 conditions of confinement as a complaint under section 1983 despite deliberate choice by
22 petitioner to proceed on habeas), superceded by statute on other grounds as recognized in
23 Woodford v. Ngo, 548 U.S. 81, 84 (2006). Even were the Court to construe this action as a civil
24 rights Complaint, however, it would be subject to dismissal for the following reasons.

25 A claim alleging an unauthorized taking of personal property without due process of law
26 in violation of the Fourteenth Amendment does not state a federal cause of action under section
27 1983 if Petitioner has an adequate post-deprivation state remedy. See Hudson v. Palmer, 468
28 U.S. 517, 533 (1984). The California Tort Claims Act provides an adequate post-deprivation


1 state remedy for the taking of personal property by prison officials. Barnett v. Centoni, 31 F.3d
2 813, 816-17 (9th Cir. 1994). Petitioner alleges that the confiscation of his foot locker was
3 accomplished without due process of law and therefore amounted to cruel and unusual
4 punishment in violation of the Eighth and Fourteenth Amendments. (Pet. at 5.) Thus, Petitioner
5 does not present a federal claim, and to the extent the Petition could be construed as a civil rights
6 Complaint, it is subject to dismissal.

7 **CONCLUSION AND ORDER**

8 For the foregoing reasons, the Court **GRANTS** Petitioner's Motion to proceed in forma
9 pauperis and **CONSTRUES** this action as a habeas petition brought pursuant to 28 U.S.C.
10 § 2254. The Petition is **DISMISSED** without prejudice to Petitioner to present any cognizable
11 claims arising from the confiscation of his personal property, to the extent there are any, in a
12 separate civil rights Complaint filed pursuant to 42 U.S.C. § 1983 which will be given a separate
13 civil case number.

14 **IT IS SO ORDERED.**

15 DATED: February 4, 2010

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17 **WILLIAM Q. HAYES**
18 United States District Judge
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