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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Signature] DEPUTY

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

JAIME GONZALEZ,
Petitioner,
v.
DOMINGO URIBE, Warden,
Respondent.

Civil No. 13-2111 WQH MDD

**ORDER: (1) GRANTING
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND
(2) DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

REQUEST TO PROCEED IN FORMA PAUPERIS

Petitioner has \$.02 on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

FAILURE TO STATE A COGNIZABLE CLAIM ON HABEAS CORPUS

Upon review of the Petition, it appears to the Court that a Petition for Writ of Habeas Corpus brought pursuant to § 2254 is not the proper vehicle for the claims

1 Petitioner presents. Petitioner lists various problems he claims he is facing in prison.
2 Petitioner claims that prison officials improperly destroyed his personal property,
3 specifically a radio. (See Pet. at 18.) He asks that his radio be repaired or replaced. (See
4 Pet. at 27.) Petitioner's claim is not cognizable on habeas because it does not challenge
5 the constitutional validity or duration of confinement. See 28 U.S.C. § 2254(a); Preiser
6 v. Rodriguez, 411 U.S. 475, 500 (1973); Heck v. Humphrey, 512 U.S. 477, 480-85
7 (1994). "Section 2254 applies only to collateral attacks on state court judgments."
8 McGuire v. Blubaum, 376 F. Supp. 284, 285 (D. Ariz. 1974).

9 In no way does Petitioner claim his state court conviction violates the Constitution
10 or laws or treaties of the United States. Rule 4 of the Rules Governing Section 2254
11 Cases provides for summary dismissal of a habeas petition "[i]f it plainly appears from
12 the face of the petition and any exhibits annexed to it that the petitioner is not entitled
13 to relief in the district court." Rule 4, 28 U.S.C. foll. § 2254. Here, it is plain from the
14 petition that Petitioner is not presently entitled to federal habeas relief because he has not
15 alleged that the state court violated his federal rights.

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

1 **CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** Petitioner's request to proceed in
3 forma pauperis. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus
4 without prepayment of the filing fee. Further, the Court **DISMISSES** this case without
5 prejudice for failure to state a cognizable claim on habeas corpus. IT IS HEREBY
6 ADJUDGED THAT JUDGMENT BE ENTERED DISMISSING THE PETITION AND
7 THE ACTION.

8 **IT IS SO ORDERED.**

9
10 DATED: _____

9/24/13



11 William Q. Hayes
12 United States District Judge

13 Copies to: ALL PARTIES

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