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

NORMAN PAUL FELTS,

Petitioner,

vs.

WARDEN NOONAN,

Respondent.

CASE NO. 15cv684-LAB (NLS)

**ORDER SCREENING AND
DISMISSING PETITION**

Petitioner Norman Felts, a prisoner in federal custody, filed this petition for writ of habeas corpus and paid the \$5 filing fee required for habeas petitions. The Prison Litigation Reform Act requires the Court to screen pleadings filed by prisoners and to dismiss them to the extent they are frivolous or malicious or fail to state a claim. See 28 U.S.C. § 1915(e)(2) and 42 U.S.C. § 1997e.

The petition does not challenge the fact of Felts' confinement, but rather the conditions of his confinement. Felts seeks access to a law library and an opportunity to communicate more easily with his attorney. He asks that the Court order him transferred to the Metropolitan Correctional Center so he can use the library there and use email to communicate with his attorney. Habeas petitions are limited to challenges to the length or legality of confinement. See *Hill v. McDonough*, 547 U.S. 573, 579 (2006). Challenges to conditions of confinement are properly brought as civil rights actions. See *Preiser v.*

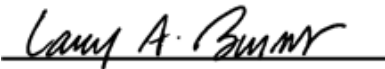
1 *Rodriguez*, 411 U.S. 475, 484–86 (1973). See also *Alcala v. Rios*, 434 Fed. Appx. 668,
2 669–70 (9th Cir. 2011) (holding that district court properly construed petition challenging the
3 conditions of prisoner’s confinement as a civil rights action, not a habeas petition); *Greenhill*
4 *v. Lappin*, 376 Fed. Appx. 757, 757 (9th Cir. 2010) (same).

5 While a court has discretion to construe a mislabeled habeas corpus petition as a civil
6 rights action, it is inappropriate to do so here. See *Johnson v. Fed’l Bureau of Prisons*, 2013
7 WL 3467208, at *2 (C.D.Cal., July 9, 2013) (explaining that construing habeas petition as civil
8 rights action may have negative consequences for the petitioner/plaintiff). Furthermore, Felts
9 has only paid the filing fee for a habeas petition, not the \$350 fee required for civil actions.

10 Because it is clear Felts cannot amend his petition to allege new facts making out a
11 habeas claim, it is **DISMISSED WITHOUT PREJUDICE**. This order does not prevent Felts
12 from filing a civil complaint raising the same claims. If he wishes to file his complaint in this
13 action, he must do so no later than **April 22, 2015**. He must also pay the required filing fee
14 or move to proceed *in forma pauperis* no later than **April 22, 2015**. Or, if he wishes, he may
15 bring his civil rights claims by filing a separate action.

16 **IT IS SO ORDERED.**

17 DATED: April 3, 2015

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19 **HONORABLE LARRY ALAN BURNS**
20 United States District Judge

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