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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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08 MICHAEL A. JACKSON,

) CASE NO.: C08-1059-JLR-MAT

)

09       Petitioner,

)

)

10       v.

) ORDER DENYING PETITIONER'S

) SECOND MOTION FOR

11 PAT GLEBE,

) APPOINTMENT OF COUNSEL AND

) STRIKING PETITIONER'S

12       Respondent.

) PROPOSED COMPLAINT

)

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14       Petitioner is a state prisoner who has filed *pro se* an amended petition for habeas corpus  
15 pursuant to 28 U.S.C. § 2254. (Dkt. No. 26). Respondent has been directed by the Court to file  
16 an answer to the amended petition. (Dkt. No. 22). Petitioner recently filed a motion for  
17 appointment of counsel and a proposed civil rights complaint. (Dkt. Nos. 29 & 30). The Court,  
18 having considered petitioner's motion, proposed complaint, and the balance of the record, does  
19 hereby find and ORDER:

20       (1)     Petitioner previously filed a motion for appointment of counsel, which the Court  
21 denied on January 13, 2009. (Dkt. No. 27). Petitioner raises no new grounds for appointment  
22 of counsel in his second motion. Accordingly, for the reasons cited in the Court's previous Order,

ORDER DENYING PETITIONER'S SECOND  
MOTION FOR APPOINTMENT OF COUNSEL AND  
STRIKING PETITIONER'S PROPOSED COMPLAINT  
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01 petitioner's second motion for appointment of counsel (Dkt. No. 29) is DENIED.

02 (2) Petitioner has submitted a proposed civil rights complaint pursuant to 42 U.S.C.  
03 § 1983. (Dkt. No. 30). In the complaint, petitioner asserts that prison officials violated his  
04 constitutional rights by using excessive force against him. (Dkt. No. 30 at 3). For reasons that  
05 are unclear, petitioner asks in the complaint that it be "convert[ed] into habeas corpus petition."  
06 (*Id.* at 4). Petitioner is advised that petitions for a writ of habeas corpus and civil rights  
07 complaints are two distinct types of actions. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)  
08 (civil rights complaints challenge the *conditions* of confinement while habeas petitions challenge  
09 the *validity* of confinement). If petitioner wishes to pursue his claim of excessive force, he must  
10 file a separate action under 42 U.S.C. § 1983. Accordingly, the Clerk shall STRIKE the proposed  
11 complaint (Dkt. No. 30) and shall return it to petitioner.

12 (3) The Clerk shall direct copies of this Order to petitioner, counsel for respondent,  
13 and to the Honorable James L. Robart.

14 DATED this 9th day of February, 2009.

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17 Mary Alice Theiler  
18 United States Magistrate Judge  
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