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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 MICHAEL D MILAM,

11 Plaintiff,

12 v.

13 SHAWN NOBLE, BRENT HYER, ANDY  
14 HALL, JEREMY JAMES, PIERCE  
COUNTY,

15 Defendants.

CASE NO. C14-5828 BHS-JRC

ORDER TO SHOW CAUSE

16 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States  
17 Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local  
18 Magistrate Judge Rules MJR1, MJR3 and MJR4.

19 The Court has granted plaintiff in forma pauperis status and is reviewing the complaint as  
20 required by 28 U.S.C. § 1915A. Plaintiff is an inmate currently incarcerated at the Monroe  
21 Correctional Complex. Plaintiff alleges that Lakewood police officer Shawn Noble violated his  
22 right to privacy during a search and that the Pierce County prosecutor used illegally obtained  
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1 evidence in a criminal trial (Dkt. 1-1, proposed complaint). Plaintiff does not inform the Court if  
2 he was convicted of an offense or if this offense is the reason he is currently incarcerated.

3 The Court needs to know if plaintiff is incarcerated because of the criminal trial he  
4 mentions in his complaint. The Court needs this information to determine if the complaint can be  
5 served or if plaintiff is precluded from proceeding because his action would call into question the  
6 propriety of his conviction. If a plaintiff is challenging the very fact or duration of physical  
7 imprisonment, and the relief sought will determine whether plaintiff is or was entitled to  
8 immediate release or a speedier release from that imprisonment, plaintiff's sole federal remedy is  
9 a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

10 The United States Supreme Court held that “[e]ven a prisoner who has fully exhausted  
11 available state remedies has no cause of action under § 1983 unless and until the conviction or  
12 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas  
13 corpus.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The Court added:

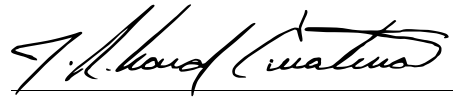
14 Under our analysis the statute of limitations poses no difficulty while the state  
15 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]  
16 § 1983 cause of action for damages attributable to an unconstitutional conviction  
or sentence does not accrue until the conviction or sentence has been invalidated.

17 *Id.* at 489. “[T]he determination whether a challenge is properly brought under § 1983 must be  
18 made based upon whether ‘the nature of the challenge to the procedures [is] such as necessarily  
19 to imply the invalidity of the judgment.’ *Id.* If the court concludes that the challenge would  
20 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge  
21 must be brought as a petition for a writ of habeas corpus, not under § 1983.” *Butterfield v. Bail*,  
120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

22 The Court orders plaintiff to show cause why the Court should not recommend that this  
23 action be dismissed for failure to state a claim. As part of his response plaintiff must inform the  
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1 Court if he was convicted as a result of the actions and facts he set forth in his complaint.  
2 Plaintiff's response to this order must be filed on or before December 5, 2014, or the Court will  
3 recommend that the action be dismissed.

4 Dated this 29<sup>th</sup> day of October, 2014.

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6 J. Richard Creatura  
7 United States Magistrate Judge  
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