

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jefferey S. Nedd v. Charles Barrett, et al.

Case No. 1:25-cv-01033-KES-CDB (PC) · No. 1:25-cv-01033-KES-CDB (PC) · Decided November 20, 2025

SUMMARY

The United States District Court for the Eastern District of California denies Plaintiff Jefferey S. Nedd’s motions to amend the complaint, for entry of default, and to appoint counsel. The court recommends dismissal without leave to amend of Nedd’s amended 42 U.S.C. § 1983 complaint against Charles Barrett and Kelly Smith for failure to state a cognizable claim, explaining that the ineffective-assistance and related challenges belong in habeas proceedings and that the complaint lacks sufficient facts linking the defendants to a constitutional deprivation. The Findings and Recommendations allow 21 days for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 20, 2025
DOCKET	1:25-cv-01033-KES-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se brought a 42 U.S.C. § 1983 action. After the court previously screened the complaint and granted leave to amend, Plaintiff filed a first amended complaint and motions to amend, for entry of default judgment, and for appointment of counsel. The magistrate judge denied the motions and recommended dismissal of the action without leave to amend for failure to state a claim.
STANDARD OF REVIEW	On screening under 28 U.S.C. § 1915A, the court determines whether the complaint states a cognizable legal theory supported by sufficient factual allegations. Factual allegations are accepted as true for screening purposes, but legal conclusions and conclusory assertions are not.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations and interlocutory orders of a federal district court

PARTIES

Jefferey S. Nedd v. Charles Barrett, Kelly Smith

TOPICS

section 1983

prisoners rights

federal habeas corpus

motion to amend

default judgment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

habeas corpus

pleading

QUESTIONS PRESENTED

1. Whether Plaintiff's motion to amend should be denied as moot because the court had already granted leave to amend and accepted the amended complaint as operative.
2. Whether Plaintiff was entitled to entry of default judgment when service had not been ordered or completed.
3. Whether Plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his § 1983 action.
4. Whether the amended complaint stated a cognizable § 1983 claim under Federal Rule of Civil Procedure 8 and 28 U.S.C. § 1915A.
5. Whether Plaintiff's ineffective-assistance and related challenges to the validity of his confinement were properly brought in a § 1983 action rather than a habeas petition.
6. Whether further leave to amend would be futile.

HOLDINGS

1. A motion to amend is moot when the court has already granted leave to amend and the filed amended complaint is accepted as the operative complaint.
2. Entry of default judgment is premature when service has not been ordered or completed under Federal Rule of Civil Procedure 4(c)(3).
3. A prisoner proceeding under § 1983 is not constitutionally entitled to appointed counsel, and counsel may be requested only when exceptional circumstances exist, evaluated by considering both the likelihood of success on the merits and the plaintiff's ability to articulate claims in light of the complexity of the issues.
4. A prisoner complaint must be dismissed at screening if it lacks a cognizable legal theory or sufficient facts to support a cognizable claim.
5. Claims challenging the validity or duration of confinement, including ineffective-assistance claims, are generally cognizable in habeas corpus rather than under § 1983; a § 1983 action is proper for challenges to conditions of confinement that would not necessarily shorten the sentence.
6. Further leave to amend may be denied when the plaintiff has already amended after receiving notice of the deficiencies and the allegations show that the defects cannot be cured.

KEY QUOTATIONS

“Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.” (at 5)

“In determining whether “exceptional circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.”” (at 6)

“Habeas corpus is the appropriate remedy for challenges to the validity of the fact or length of confinement or matters affecting the duration of confinement.” (at 9)

“Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”” (at 11)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that attorney Charles Barrett failed to prepare a motion for DNA testing and that prosecutor-related participants knew a witness had lied. He asserted ineffective assistance of counsel, access to evidence and DNA testing, illegal prosecution, false imprisonment, due process violations, and cruel and unusual punishment, seeking DNA testing. The amended complaint contained few factual allegations linking either named defendant to a constitutional deprivation concerning the conditions or circumstances of Plaintiff’s confinement.

PROCEDURAL HISTORY

The court issued an initial screening order on September 4, 2025, finding no cognizable claims and granting leave to amend. Plaintiff filed a first amended complaint on September 24, 2025, along with motions to amend and appoint counsel, and later filed a second motion to appoint counsel and a motion for entry of default. The magistrate judge accepted the first amended complaint as the operative complaint, denied the motions, and issued findings and recommendations to the assigned district judge recommending dismissal without leave to amend.

DISPOSITION

other

REMAND INSTRUCTIONS

The findings and recommendations were submitted to the assigned United States District Judge under 28 U.S.C. § 636(b)(1). The parties were given 21 days after service to file objections.

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Rand v. Rowland, 154 F.3d 952, 954 n.1 (9th Cir. 1998)
- Mallard v. U.S. Dist. Court, 490 U.S. 296, 304-05 (1989)
- LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987)

- Bonin v. Vasquez, 999 F.2d 425, 428-29 (9th Cir. 1993)
- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Dijkstra v. Campos, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022)
- Gipbsin v. Kernan, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2
- Robinson v. Cryer, No. 1:20-cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D. Cal. Jan. 11, 2021)
- Callender v. Ramm, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018)
- Galvan v. Fox, No. 2:15-CV-01798-KJM (DB), 2017 WL 1353754, at *8 (E.D. Cal. Apr. 12, 2017)
- Ricks v. Austria, No. 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016)
- Thornton v. Schwarzenegger, No. 10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D. Cal. Jan. 11, 2011)
- Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990)
- Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512-13 (2002)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989)
- Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Rizzo v. Goode, 423 U.S. 362, 373-75 (1976)
- Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)
- Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam)
- Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)
- Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir. 2016)
- Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)
- United States v. Seesing, 234 F.3d 456, 464 (9th Cir. 2000)
- Hartman v. CDCR, 707 F.3d 1114, 1129-30 (9th Cir. 2013)
- Nedd v. Bird, No. 1:23-CV-01630-HBK (PC), 2024 WL 1198732, at *6 (E.D. Cal. Mar. 20, 2024), report and recommendation adopted, No. 1:23-CV-01630-KES-HBK (PC), 2024 WL 3471004 (E.D. Cal. July 19, 2024)
- Nedd v. Bird, No. 1:22-CV-0704 JLT HBK, 2023 WL 2696633, at *1 (E.D. Cal. Mar. 29, 2023)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
 CALIFORNIA 10 11 JEFFEREY S. NEDD, Case No.: 1:25-cv-01033-KES-CDB (PC) 12
 Plaintiff, FINDINGS AND RECOMMENDATIONS TO DISMISS PLAINTIFF’S COMPLAINT
 FOR 13 v. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED 14
 CHARLES BARRETT, et al., (Doc. 13) 15 Defendants. ORDER DENYING PLAINTIFF’S

MOTIONS 16 (1) TO AMEND COMPLAINT, (2) FOR ENTRY OF DEFAULT, AND (3) TO 17
APPOINT COUNSEL 18 (Docs.

10, 11, 12, 14) 19 21-DAY DEADLINE 20 Plaintiff Jefferey S. Nedd (“Plaintiff”) is a state
prisoner proceeding pro se in this civil rights 21 action. On September 4, 2025, the Court issued its
first screening order finding Plaintiff failed to 22 bring any cognizable claims and granting leave
to amend. (Doc. 6). Plaintiff filed his first amended 23 complaint on September 24, 2025.

(Doc. 13). Plaintiff also filed two motions to appoint counsel 24 (Docs. 10, 14), a motion to amend
the complaint (Doc. 11), and a motion for entry of default (Doc. 25 12). 26 I. MOTION TO
AMEND THE COMPLAINT 27 The Court granted Plaintiff leave to amend his complaint in its
first screening order. See (Doc. 6). Plaintiff filed his first amended complaint (Doc.

13) the same day as his motion to amend 1 the complaint (Doc. 11). As Plaintiff was granted leave
to amend his complaint prior, the Court 2 will accept Plaintiff’s first amended complaint as the
operative complaint.

Thus, Plaintiff’s motion 3 to amend the complaint will be denied as moot. 4 II. MOTION FOR
ENTRY OF DEFAULT JUDGMENT 5 Plaintiff seeks entry of default against Defendants,
asserting that the docket shows 6 Defendants were served by the United States Marshals Service
on August 15, 2025, with the 7 summons and complaint. (Doc. 12 at 1). No such service has been
ordered and there is no such 8 indication on the docket.

Plaintiff’s motion for entry of default judgment is therefore premature, as 9 service has not yet
been ordered pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure. 10 Thus, Plaintiffs
motion for entry of default judgment will be denied. 11 III. MOTIONS TO APPOINT COUNSEL
12 Plaintiff filed a motion to appoint counsel (Doc. 10) on September 24, 2025, and a second 13
motion to appoint counsel (Doc.

14) on October 6, 2025. Therein, Plaintiff incorrectly refers to this 14 proceeding as a habeas
corpus action and represe nts that he is indigent. (Doc. 10 at 1). 15 A. Governing Law 16 Plaintiffs
do not have a constitutional right to appointed counsel in section 1983 actions. 17 Rand v.
Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on other grounds, 154 F.3d 18 952,
954 n.1 (9th Cir.

1998). Nor can the Court require an attorney to represent a party under 28 19 U.S.C. § 1915(e)(1).
See Mallard v. U.S. Dist. Court, 490 U.S. 296, 304-05 (1989). However, in 20 “exceptional
circumstances,” the Court may request the voluntary assistance of counsel pursuant 21 to section
1915(e)(1). Rand, 113 F.3d at 1525. 22 Given that the Court has no reasonable method of securing
and compensating counsel, the 23 Court will seek volunteer counsel only in extraordinary cases.

In determining whether “exceptional 24 circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] 25 the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal 26 issues involved.” Rand, 113 F.3d at 1525 (quotations and citations omitted). 27 B. Analysis 1 claims. Rand, 113 F.3d at 1525.

The Court is required to screen complaints brought by prisoners 2 seeking relief against a governmental entity or officer or employee of a governmental entity. 28 3 U.S.C. 1915A(a); see also (Doc. 6 at 1). At screening, the Court is tasked with determining whether 4 a plaintiff has sufficiently and plausibly alleged a cause of action or claim entitling the plaintiff to 5 relief.

The Court previously screened the operative complaint and determined that it failed to assert 6 any cognizable claims. (Doc. 13). In light of this, and given that the Court at screening does not 7 test the merits of the allegations but assumes the factual allegations to be true for purposes of 8 screening, Plaintiff is not likely to succeed on the claims asserted.

9 Next, the Court must also evaluate Plaintiff’s ability to articulate his claims pro se in light 10 of the complexity of the legal issues involved. Rand, 113 F.3d at 1525. In this case, the Court notes 11 that Plaintiff’s filings reflect Plaintiff is logical and articulate. See, e.g., (Docs. 1, 12, 13); see 12 LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court’s denial of request for 13 appointment of counsel, where pleadings demonstrated petitioner had “a good understanding of the 14 issues and the ability to present forcefully and co herently his contentions”).

15 Neither the claims asserted nor the relevant events and transactions are complex. See Bonin 16 v. Vasquez, 999 F.2d 425, 428–29 (9th Cir. 1993) (while Plaintiff may have limited knowledge of 17 the law, the Court does not find the issues in this case “so complex that due process violations will 18 occur absent the presence of counsel”); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.

1986) 19 (explaining that “[a]lthough discovery was essential ... the need for such discovery does not 20 necessarily qualify the issues involved as ‘complex’”). Stated another way, Plaintiff’s belief that 21 the claims are complex is not the test. Rather, the type of claim or claims asserted are the subject 22 of the Court’s consideration of complexity. 23 To the extent Plaintiff relies upon his indigency and incarceration to support his motion, 24 those circumstances do not qualify as exceptional circumstances warranting the appointment of 25 counsel.

See Dijkstra v. Campos, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 26 25, 2022) (“Plaintiff’s indigence does not qualify ‘as an exceptional circumstance in a prisoner civil 27 rights case’”); Gipbsin v. Kernan, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2 (E.D. Cal. 1 success on the merits or his ability to articulate his claims pro se”); Robinson v. Cryer, No. 1:20- 2 cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D.

Cal. Jan. 11, 2021) (“Although Plaintiff is 3 proceeding pro se and is incarcerated, he faces the same obstacles all pro se prisoners face”). 4 *Callender v. Ramm*, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 5 2018) (“The law is clear: neither plaintiff’s indigence, nor his lack of education, nor his lack of 6 legal expertise warrant the appointment of counsel”); *Galvan v. Fox*, No. 2:15-CV-01798-KJM 7 (DB), 2017 WL 1353754, at *8 (E.D.

Cal. Apr. 12, 2017) (“Circumstances common to most 8 prisoners, such as lack of legal education and limited law library access, do not establish exceptional 9 circumstances that warrant a request for voluntary assistance of counsel”). 10 Further, that an attorney may be better able to perform research, investigate, and represent 11 Plaintiff during trial does not amount to an exceptional circumstance.

Rand, 113 F.3d at 1525 12 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied appointment 13 of counsel despite fact that pro se prisoner “may well have fared better-particularly in the realm of 14 discovery and the securing of expert testimony ”); *Wilborn*, 789 F.2d at 1331 (same); *Ricks v. 15 Austria*, No. 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D.

Cal. May 2, 2016) (while 16 a pro se litigant may be better served with the assistance of counsel were the case to proceed to 17 trial, the court need not appoint counsel if plaintiff can articulate his claims and exceptional 18 circumstances do not exist); *Thornton v. Schwarzenegger*, No. 10CV01583 BTM RBB, 2011 WL 19 90320, at *7 (S.D. Cal. Jan. 11, 2011) (explaining that “[f]actual disputes and anticipated cross- 20 examination of witnesses do not indicate the presence of complex legal issues warranting a finding 21 of exceptional circumstances”).

22 The test is not whether Plaintiff would benefit from the appointment of counsel; the test is 23 whether exceptional circumstances exist. Here, no exceptional circumstances exist warranting the 24 appointment of counsel.

As such, Plaintiff’s motions for appointment of counsel will be denied. 25 IV. SCREENING REQUIREMENT 26 The Court is required to screen complaints brought by prisoners seeking relief against a 27 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

The 1 to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who 2 is immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if it lacks 3 a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. See 4 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.

1990). 5 V. PLEADING REQUIREMENTS 6 A. Federal Rule of Civil Procedure 8(a) 7 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited 8 exceptions.”

Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513 (2002). A complaint must contain “a 9 short and plain statement of the claims showing that the pleader is entitled to relief.” Fed. R. Civ.

10 P. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim 11 is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512 (internal quotation marks & 12 citation omitted). 13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a 14 cause of action, supported by mere conclusory s tatements, do not suffice.” Ashcroft v. Iqbal, 556 15 U.S. 662, 678 (2009) (citing Bell Atl.

Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must 16 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” 17 Id. (quoting Twombly, 550 U.S. at 570). Factual allegations are accepted as true, but legal 18 conclusions are not. Id. (citing Twombly, 550 U.S. at 555). 19 The Court construes pleadings of pro se prisoners liberally and affords them the benefit of 20 any doubt.

Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the 21 liberal pleading standard... applies only to a plaintiff’s factual allegations,” not his legal theories. 22 Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation of a civil 23 rights complaint may not supply essential elements of the claim that were not initially pled,” Bruns 24 v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir.

1997) (internal quotation marks & 25 citation omitted), and courts “are not required to indulge unwarranted inferences.” Doe I v. Wal- 26 Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks & citation omitted). 27 The “sheer possibility that a defendant has acted unlawfully” is not sufficient to state a cognizable 1 at 678 (internal quotation marks & citation omitted).

2 B. Linkage and Causation 3 Section 1983 provides a cause of action for the violation of constitutional or other federal 4 rights by persons acting under color of state law. See 42 U.S.C. § 1983. To state a claim under 5 section 1983, a plaintiff must show a causal connection or link between the actions of the defendants 6 and the deprivation alleged to have been suffered by the plaintiff.

See Rizzo v. Goode, 423 U.S. 7 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation 8 of a constitutional right, within the meaning of section 1983, if he does an affirmative act, 9 participates in another’s affirmative acts, or omits to perform an act which he is legal required to 10 do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 11 (9th Cir.

1978) (citation omitted). 12 VI. DISCUSSION 13 In the first amended complaint, Plaintiff names Charles Barrett and Kelly Smith as 14 Defendants.1 (Doc. 1 at 2). Plaintiff alleges that Charles

Barrett is an attorney and Kelly Smith a 15 district attorney. Id. 16 A. Plaintiff's Allegations 17 Plaintiff provides scant assertions of facts within his first amended complaint.

Plaintiff 18 alleges that Charles Barrett failed to prepare a motion for DNA testing, that a rape test showed "she 19 was with somebody else" and "they know she lied." Plaintiff represents that this is why he is trying 20 to test the DNA again, as "it has to match[,] she was with someone else." Id at 3. Plaintiff alleges 21 that he "told them the truth" and that Lara Boyed, the district attorney, knew and lied.

Plaintiff 22 asserts ineffective assistance of counsel, violation of a constitutional right to have access to 23 evidence that was introduced at the preliminary hearing and DNA testing, that his prosecution was 24 illegal, that he is falsely imprisoned, due process violations, and cruel and unusual punishment. Id. 25 at 2-3.

As to relief, Plaintiff seeks DNA testing. Id. at 4. 26 B. Analysis 27 i. Improperly Brought Habeas Claims 1 Notwithstanding the Court's earlier admonition in its first screening order (Doc. 6 at 4), 2 Plaintiff again improperly asserts claims alleging ineffective assistance of counsel (i.e., habeas 3 corpus claims) in this section 1983 action. 4 Federal law provides two main avenues for relief on complaints related to imprisonment: a 5 petition for habeas corpus, and a complaint under 42 U.S.C. § 1983.

Muhammad v. Close, 540 U.S. 6 749, 750 (2004) (per curiam). Habeas corpus is the appropriate remedy for challenges to the validity 7 of the fact or length of confinement or matters affecting the duration of confinement. Preiser v. 8 Rodriguez, 411 U.S. 475, 500 (1973). If a favorable challenge would not "necessarily lead to [a 9 petitioner's] immediate or earlier release from confinement," the claim does not fall within "the 10 core of habeas corpus." Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir.

2016). In contrast, requests 11 for relief turning on circumstances of confinement may be presented in a § 1983 action. 12 Muhammad, 540 U.S. at 750; see Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003) ("habeas 13 jurisdiction is absent, and a § 1983 action is proper, where a successful challenge to a prison 14 condition will not necessarily shorten the prisone r's sentence.").

15 Habeas actions and § 1983 prisoner civil right cases "differ in a variety of respects—such 16 as the proper defendant, filing fees, the means of collecting them, and restrictions on future 17 filings—that may make recharacterization impossible or, if possible, disadvantageous to the 18 prisoner compared to a dismissal without prejudice of his petition for habeas corpus." Id. at 935-36 19 (citations omitted); United States v. Seesing, 234 F.3d 456, 464 (9th Cir.

2000) (courts should not 20 recharacterize a prisoner's pro se filing as a federal habeas petition when doing so may be to the 21 prisoner's disadvantage). 22 As claims of ineffective assistance of

counsel in general are properly brought in a petition 23 for habeas corpus, they are non-cognizable and may not be asserted in a section 1983 action. 24 Additionally, as another judge of this Court recounted to Plaintiff in a prior section 1983 action 25 filed by Plaintiff, his preceding habeas corpus petition was dismissed “because it was filed more 26 than a year after AEDPA’s one-year limitation period had expired, and the district court further had 27 denied Plaintiff a certificate of appealability.

Further, the Ninth Circuit, after affording Plaintiff an 1 Plaintiff a certificate of appealability.” Nedd v. Bird, No. 1:23-CV-01630-HBK (PC), 2024 WL 2 1198732, at *6 (E.D. Cal. Mar. 20, 2024), report and recommendation adopted, No. 1:23-CV- 3 01630-KES-HBK (PC), 2024 WL 3471004 (E.D. Cal. July 19, 2024) (referencing Nedd v. Bird, 4 No. 1:22-CV-0704 JLT HBK, 2023 WL 2696633, at *1 (E.D.

Cal. Mar. 29, 2023), certificate of 5 appealability denied, No. 23-15730, 2023 WL 5163337 (9th Cir. July 25, 2023)). 6 Thus, it appears that if Plaintiff commenced any such action with a petition for writ of 7 habeas corpus, it would be denied as untimely. 8 ii. Section 1983 Claims 9 Here, Plaintiff names only Charles Barrett and Kelly Smith as Defendants and has not 10 asserted any facts that either Defendant violated his constitutional rights as to the circumstances or 11 conditions of his confinement.

He has not alleged any actions taken or actions omitted by 12 Defendants relating to any alleged deprivations cognizable under section 1983. As the Court 13 advised Plaintiff in its first screening order, Plaintiff’s complaint is devoid of facts supporting any 14 claims cognizable under section 1983 and, thus, fails to comply with Rule 8. 15 C. Further Leave to Amend Would Be Futile 16 Because Plaintiff’s first amended complaint is deficient for the same reasons as those 17 articulated in the Court’s first screening orders (see Doc.

6) and because Plaintiff has failed to 18 remedy those deficiencies, the Court assesses that Plaintiff cannot cure his pleadings and, thus, that 19 leave to amend would be futile. See Hartman v. CDCR, 707 F.3d 1114, 1129-30 (9th Cir. 2013) 20 (affirming dismissal of first amended complaint and finding leave to amend futile where 21 complaint’s allegations belied plaintiff’s entitlement to relief).

22 VII. CONCLUSION, ORDER, AND RECOMMENDATION 23 For the foregoing reasons, it is HEREBY ORDERED that: 24 1. Plaintiff’s motion to amend the complaint (Doc. 11) is DENIED as moot. 25 2. Plaintiff’s motion for entry of default judgment (Doc. 12) is DENIED. 26 3. Plaintiff’s motions to appoint counsel (Docs. 10, 14) are DENIED. 27 And it is HEREBY RECOMMENDED that this action be dismissed, without leave to 1 These Findings and Recommendations will be submitted to the United States District Judge 2 | assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within 21 days after 3 | being served with a copy of these Findings and Recommendations, a party may file written 4 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 5 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave 6 | of Court and good cause shown.

The Court will not consider exhibits attached to the Objections. 7 | To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the 8 | record by its CM/ECF document and page number, when possible, or otherwise reference the 9 | exhibit with specificity. Any pages filed in excess of the 15-page limitation may be disregarded by 10 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 11 | 636(b)d)(C).

12 A party’s failure to file any objections within the specified time may result in the waiver of 13 | certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 14 | SO ORDERED. 'S | Dated: __November 19, 2025 | Word bo 16 UNITED STATES MAGISTRATE JUDGE 17 18 19 20 21 22 23 24 25 26 27 28