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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

DENNIS PETILLO, JR.,	)	Case No. CV 17-08062-JFW (AS)
	)	
Petitioner,	)	<b>ORDER OF DISMISSAL</b>
	)	
v.	)	
	)	
LOS ANGELES DEPT. OF CHILDREN	)	
& FAMILY SERVICES,	)	
	)	
Respondent.	)	

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**I. BACKGROUND**

On November 3, 2017, Dennis Petillo, Jr. ("Petitioner"), a proceeding pro se, filed a "Petition for Writ of Habeas Corpus" ("Petition"). (Docket Entry No. 1). The Petition alleged that Child Services failed to investigate Petitioner's complaint that his sister had been molested by their father, in violation of the prohibition against cruel and unusual punishment under the First, Eighth and Fourteenth Amendments. (Petition at 3).

1           On November 8, 2017, the Court screened the Petition and  
2 found it to be deficient in the following respects: "(1) It is not  
3 clear whether Petitioner is attempting to file a Petition for Writ  
4 of Habeas Corpus by a Person in State Custody (pursuant to 28  
5 U.S.C. § 2254), or some other pleading (i.e., a civil rights  
6 action pursuant to 42 U.S.C. § 1983); (2) The Court is unable to  
7 discern what claim(s) Petitioner intends to assert; (3) Petitioner  
8 has failed to name the proper Respondent (the name of the officer  
9 having custody over him); (4) Petitioner has failed to plainly  
10 state "[t]he statutory or other basis for the exercise of  
11 jurisdiction by this Court," in violation of Central District  
12 Local Rule 8-1 and Fed.R.Civ.P. Rule 8(a); (5) Assuming the  
13 pleading is a Petition for Writ of Habeas Corpus by a Person in  
14 State Custody, Petitioner has failed to specify any understandable  
15 ground for relief and does not include any supporting facts, in  
16 violation of Rule 2(c), Rules Governing Section 2254 Cases in the  
17 United States District Courts; (6) Petitioner has alleged vague  
18 and conclusory "claims," in violation of Fed.R.Civ.P. Rule 8(a)  
19 and 8(d); (7) Petitioner has failed to allege any claim(s), much  
20 less any claims which go to the fact or duration of his  
21 confinement. See Preiser v. Rodriguez, 411 U.S. 475, 489 (1973);  
22 and (8) It is not clear whether Petitioner has exhausted his state  
23 remedies with respect to each "claim" alleged in the Petition."  
24 (Docket Entry No. 3 at 1-2). The Court ordered Petitioner to file  
25 a First Amended Petition on the proper Central District form by  
26 November 29, 2017, and informed Petitioner that, "The First  
27 Amended Petition shall be complete in itself, must not incorporate  
28 by reference any other pleading, and should set forth each claim

1 which Petitioner[] intend[s] to raise in this proceeding and the  
2 factual bases for each claim. (Id. at 2).

3  
4 On November 13, 2017, Petitioner filed a "First Amended  
5 Petition for Writ of Habeas Corpus" ("First Amended Petition").  
6 (Docket Entry No. 4). The First Amended Petition appeared to  
7 allege inter alia that Petitioner attempted to protect himself  
8 following his father's threats to murder him, resulting in the  
9 violation of the prohibition against cruel and unusual punishment  
10 under the First, Eighth and Fourteenth Amendments. (First Amended  
11 Petition at 3).

12  
13 On November 17, 2017, the Court issued an Order finding the  
14 First Amended Petition was deficient in the following respects:  
15 "(1) It is not clear whether Petitioner is attempting to file a  
16 First Amended Petition for Writ of Habeas Corpus by a Person in  
17 State Custody (pursuant to 28 U.S.C. § 2254) , or some other  
18 pleading (i.e., a civil rights action pursuant to 42 U.S.C. §  
19 1983); (2) The Court is unable to discern what claim(s) Petitioner  
20 intends to assert; (3) Petitioner has failed to name the proper  
21 Respondent (the name of the state officer having custody over him,  
22 i.e., prison warden). Petitioner's father is not a proper  
23 respondent.; (4) Petitioner has failed to plainly state "[t]he  
24 statutory or other basis for the exercise of jurisdiction by this  
25 Court," in violation of Central District Local Rule 8-1 and  
26 Fed.R.Civ.P. Rule 8(a); (5) Assuming the pleading is a First  
27 Amended Petition for Writ of Habeas Corpus by a Person in State  
28 Custody, Petitioner has failed to specify any understandable

1 ground for relief and does not include any supporting facts, in  
2 violation of Rule 2(c), Rules Governing Section 2254 Cases in the  
3 United States District Courts; (6) Petitioner has alleged vague  
4 and conclusory "claims," in violation of Fed.R.Civ.P. Rule 8(a)  
5 and 8(d); (7) Petitioner has failed to allege any claim(s), much  
6 less any claims which go to the fact or duration of his  
7 confinement. See Preiser v. Rodriguez, 411 U.S. 475, 489 (1973);  
8 and (8) It is not clear whether Petitioner has exhausted his state  
9 remedies with respect to each "claim" alleged in the First Amended  
10 Petition." (Docket Entry No. 5 at 1-2). The Court ordered  
11 Petitioner to file a Second Amended Petition on the proper Central  
12 District form by December 8, 2017, and informed Petitioner that,  
13 "The Second Amended Petition shall be complete in itself, must not  
14 incorporate by reference any other pleading, and should set forth  
15 each claim which Petitioner intends to raise in this proceeding  
16 and the factual bases for each claim. Id. at 2. The Court  
17 expressly warned Petitioner that his failure to comply with the  
18 the Order would result in a recommendation that this action be  
19 dismissed for failure to comply with the Court's Order and/or for  
20 failure to prosecute pursuant to Fed.R.Civ.P. 41(b)). (Id.).

21  
22 On December 27, 2017, the Court issued a Report and  
23 Recommendation recommending the dismissal of this action based on  
24 Petitioner's failure to comply with the Court's Order dated  
25 November 17, 2017 and/or for failure to prosecute. (Docket Entry  
26 No. 7).

27  
28 On January 24, 2018, Petitioner filed what the Court

1 construed as a Second Amended Petition by a Person in State  
2 Custody pursuant to 28 U.S.C. § 2254 ("Second Amended Petition").  
3 Docket Entry No. 8).  
4

5 Based on the filing of the Second Amended Petition, on  
6 January 29, 2017, the Court issued an Order vacating the December  
7 27, 2017 Report and Recommendation. (Docket Entry No. 9).  
8

9 The Second Amended Petition asserts the following grounds for  
10 federal habeas relief: (1) "Violation of 1st[,] 8th[,] 14th  
11 Amendment Constitution Bill of Rites (sic) Terrorist Threats  
12 Harrasment (sic) Tourcher (sic) Cruel Unusual Punishment[.] Mr.  
13 Volio Medina are (sic) a known gang member aka Lil Scrap objective  
14 to notify the courts government of these illegal criminal activity  
15 (sic) I had witnessed engage in the exchange of gun fire warfare  
16 felony pimpin (sic) and pandorin (sic) to prostitution solicitin'  
17 the owner of a (sic) illegal fire arm child abuse father of 3  
18 children molestation rape[.]; and (2) White v. Wells Fargo Guard  
19 Serv[,] 908 F Supp 1570 MD Ala 1995 Harrasment (sic)[,] Pellerin  
20 v. Martin Marigafta Manned Space Inc.[,] 63 Fair Empl Prac Cas BNA  
21 985[.] EDLA 1993 Racial Discrimination." (Second Amended  
22 Petition at 5).  
23

24 A Petition for Writ of Habeas Corpus can only be filed by a  
25 petitioner who is in state custody and contends that such custody  
26 is in violation of the Constitution, laws or treaties of the  
27 United States. 28 U.S.C. § 2254(c).  
28

1           The claims alleged in the Petition are incomprehensible,  
2 vague and conclusory. See Hendrix v. Vasquez, 908 F.2d 490, 491  
3 (9th Cir. 1990) ("Summary dismissal is appropriate only where the  
4 allegations in the petition are 'vague [or] conclusory' or  
5 palpably incredible . . . or patently frivolous or  
6 false.'" ) (citations omitted).

7  
8           In addition, Petitioner has failed to allege any claim(s),  
9 much less any the claims which go to the fact or duration of his  
10 confinement. See Preiser v. Rodriguez, 411 U.S. 475, 489 (1973).

11  
12           Because Petitioner does not state a claim for relief under  
13 28 U.S.C. § 2254, dismissal of the Petition is warranted.

1 II. ORDER

2  
3 ACCORDINGLY, IT IS ORDERED that the Petition be dismissed  
4 without prejudice.

5  
6 LET JUDGMENT BE ENTERED ACCORDINGLY.

7  
8 DATED: February 7, 2018

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11 \_\_\_\_\_  
12 JOHN F. WALTER  
13 UNITED STATES DISTRICT JUDGE

14 Presented by:

15 / s /

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17 ALKA SAGAR  
18 UNITED STATES MAGISTRATE JUDGE  
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