

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RAMIRO MUNOZ GARZA,

1:08-cv-01307 GSA HC

Petitioner,

ORDER DISMISSING ACTION AS  
DUPLICATIVE

v.

ORDER DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT AND TERMINATE  
CASE

UNKNOWN,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has returned the consent/decline form indicating consent to the jurisdiction of the Magistrate Judge.

Petitioner filed the instant petition for writ of habeas corpus on August 26, 2008. The petition was transferred from the United States District Court for the Northern District of California to the Eastern District on September 3, 2008. After a review of the instant petition and the Court's docket of Petitioner's prior petitions, this action must be dismissed as duplicative.

A district court may dismiss a petition as duplicative after the weighing the equities of the case. Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9<sup>th</sup> Cir. 2007). In determining whether a second action is duplicative of a prior action, the court should examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same. Adams, 487 F.3d at 689. An identical cause of action is determined by the transaction test, derived from the concept of claim preclusion. Id. The court must also determine whether

1 the defendants are the same or in privity. Privity includes relationship that fall under the title of  
2 “virtual representation.” Kourtis v. Cameron, 419 F.3d 989, 996 (9<sup>th</sup> Cir. 2005).

3 A plaintiff must bring one action against a party or privies relating to the same transaction  
4 or event. Adams, 487 F.3d at 693. A court has the power to dismiss a duplicative action with  
5 prejudice to prevent a plaintiff from “fragmenting a single cause of action and litigating  
6 piecemeal the issue which could have been resolved in one action.” Adams, 487 F.3d at 694.

7 Here, it is clear that Petitioner is seeking to litigate the same claims against the same  
8 parties, or unnamed parties, in multiple suits. Petitioner has filed numerous petitions in this  
9 Court alleging the same claim(s), which have all been dismissed for failure to state a claim. See  
10 e.g. 1:06-cv-01256 LJO TAG HC; 1:06-cv-01620 OWW WMW HC (dismissed on April 20,  
11 2007); 1:06-cv-01856 OWW SMS HC (dismissed on July 6, 2007); 1:07-cv-00252 AWI TAG  
12 HC (dismissed on March 7, 2008); 1:07-cv-00385 LJO DLB HC (dismissed on October 12,  
13 2007); 1:07-cv-00763 LJO TAG HC (dismissed on March 3, 2008); 1:08-00746 DLB HC  
14 (dismissed on June 27, 2008). Such action by Petitioner is inappropriate and must curtailed.

15 After reviewing the prior petitions, it is clear that the claim raised in the instant petition  
16 arises from the same incident, raises the same claim, and seeks the same relief, as the previous  
17 petitions which were dismissed for failure to state a claim. In the instant petition, as with the  
18 prior petitions, although not stated in precise legal terms, Petitioner is challenging a conviction  
19 and prison term of thirteen years stemming from a fistfight. Because the allegations in the instant  
20 petition raise the same claim(s) and is based upon the same set of operative facts as the prior  
21 petitions, it must be dismissed as duplicative.

## 22 ORDER

23 Based on the foregoing, it is HEREBY ORDERED that the instant Petition for Writ of  
24 Habeas Corpus is DISMISSED as duplicative. The Clerk of Court is DIRECTED to enter  
25 judgment and terminate the case.

26  
27  
28 IT IS SO ORDERED.

**Dated: January 26, 2009**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE