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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CIXTO CRUIZ MURILLO,	)	1:12-cv-00656-SKO-HC
	)	
Petitioner,	)	ORDER DIRECTING THE CLERK TO SEND
	)	PETITIONER A HABEAS PETITION, A
	)	CIVIL RIGHTS COMPLAINT, AND AN
v.	)	APPLICATION TO PROCEED IN FORMA
	)	PAUPERIS
THE FIFTH APPELLATE COURT,	)	
	)	ORDER REQUIRING PETITIONER TO
Respondent.	)	FILE WITHIN THIRTY DAYS (1) A
	)	NOTICE OF VOLUNTARY DISMISSAL, OR
_____	)	(2) A PETITION OR, ALTERNATIVELY
	)	A COMPLAINT, AND TO PAY THE
	)	FILING FEE OR FILE AN IN FORMA
	)	PAUPERIS APPLICATION

Petitioner, an inmate of the California State Prison at Corcoran, California, filed a document entitled "PETITION FOR WRIT OF CERTIORARI," captioned for the "SUPREME COURT OF THE UNITED STATES EASTEREN (sic) DISTRICT." (Doc. 1, 1.) Petitioner is proceeding pro se, and the Court has authorized him to proceed in forma pauperis. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United

1 States District Courts (Habeas Rules) requires the Court to make  
2 a preliminary review of each petition for writ of habeas corpus.  
3 The Court must summarily dismiss a petition "[i]f it plainly  
4 appears from the petition and any attached exhibits that the  
5 petitioner is not entitled to relief in the district court...."  
6 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
7 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
8 1990). Habeas Rule 2(c) requires that a petition 1) specify all  
9 grounds of relief available to the Petitioner; 2) state the facts  
10 supporting each ground; and 3) state the relief requested.  
11 Notice pleading is not sufficient; the petition must state facts  
12 that point to a real possibility of constitutional error. Rule  
13 4, Advisory Committee Notes, 1976 Adoption; O'Bremski v. Maass,  
14 915 F.2d at 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75  
15 n.7 (1977)). Allegations in a petition that are vague,  
16 conclusory, or palpably incredible are subject to summary  
17 dismissal. Hendricks v. Vasquez, 908 F.2d at 491.

18 The Court may dismiss a petition for writ of habeas corpus  
19 either on its own motion under Habeas Rule 4, pursuant to the  
20 respondent's motion to dismiss, or after an answer to the  
21 petition has been filed. Advisory Committee Notes to Habeas Rule  
22 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43  
23 (9th Cir. 2001). A petition for habeas corpus should not be  
24 dismissed without leave to amend unless it appears that no  
25 tenable claim for relief can be pleaded were such leave granted.  
26 Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

27 Here, the petition is uncertain in several material  
28 respects. Because of these uncertainties, the Court is unable to

1 screen the petition or otherwise to proceed with the action.

2 It is unclear whether Petitioner intended to file for relief  
3 in this Court, and if so, what type of relief Petitioner would be  
4 seeking from this Court. The designation of the court Petitioner  
5 intended to file his petition in is uncertain. The title  
6 "SUPREME COURT OF THE UNITED STATES EASTERN DISTRICT," (pet. 1)  
7 appears to refer to the Supreme Court and not to this Court,  
8 which is a United States District Court. However, the apparent  
9 reference to the Eastern District may indicate that Petitioner is  
10 in fact seeking to file his petition in this court.

11 Further, Petitioner is petitioning for a writ of certiorari,  
12 relief which a state prisoner may seek from the United States  
13 Supreme Court. (Pet. 6, 11.) Petitioner invokes the  
14 jurisdiction of the Court pursuant to 28 U.S.C. sec. 1254(1),  
15 which pertains to review by the United States Supreme Court.  
16 (Id. at 7.)

17 In addition, the Court takes judicial notice<sup>1</sup> of its docket  
18 in Cixto Cruz Murillo, case number 1:12-cv-00531-GSA-HC, and of  
19 the petition filed therein (doc. 1), in which Petitioner has  
20 filed a petition for writ of habeas corpus relating to his  
21 criminal conviction in case number VHC248140 in the Tulare County  
22 Superior Court in 2000. (Id. at 1.) This Tulare County Superior  
23 Court case number is the same number that appears in the petition  
24 for certiorari that is before the Court in the present case.  
25 (Doc. 1 at 1, 12.)

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27 <sup>1</sup>The Court may take judicial notice of court records. Fed. R. Evid.  
28 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993);  
Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978),  
aff'd, 645 F.2d 699 (9th Cir. 1981).

1           It therefore appears that Petitioner has already filed a  
2 petition for writ of habeas corpus in this Court concerning the  
3 same judgment of conviction he is challenging in the earlier  
4 filed habeas proceeding in this Court. Because Petitioner has  
5 already filed a habeas petition in this Court, and because  
6 successive or repeated petitions for writs of habeas corpus are  
7 subject to statutory limitations, it seems unlikely that  
8 Petitioner's petition in the present proceeding is intended to be  
9 a second petition for writ of habeas corpus.

10           In the petition before the Court, Petitioner complains of  
11 the release of false information or slander by the Visalia Times  
12 Delta and conduct in excess of guidelines by parole officers or  
13 unspecified state officials, and he adverts to trying to commit  
14 suicide while waiting for a parole board hearing past the time  
15 guidelines. (Pet. 10-11.) These matters appear to relate to  
16 actions by unofficial bodies or to conditions of confinement. He  
17 also raises claims concerning errors in what appear to have been  
18 trial court proceedings, such as errors in the exclusion of  
19 evidence and sentencing, and the ineffective assistance of  
20 counsel. (Id. at 8-10.) However, Petitioner's allegations are  
21 general, and many are vague or unclear.

22           A habeas petition in federal court is the proper mechanism  
23 to challenge the fact or duration of confinement. 28 U.S.C.  
24 § 2254(a); Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)  
25 (citing Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S.Ct. 1827,  
26 1833 (1973)). In contrast, challenges to conditions of  
27 confinement must be raised in a civil rights action. Badea, 931  
28 F.2d at 574 (citing Preiser, 411 U.S. at 485, 93 S.Ct. at 1833).

1 In sum, it is unclear whether the present petition is  
2 intended to be filed in this Court. If Petitioner intended to  
3 file his petition in the United States Supreme Court and not  
4 here, Petitioner should file a notice of voluntary dismissal of  
5 the instant action. If, on the other hand, Petitioner intended  
6 to file the petition in this Court, it is unclear whether  
7 Petitioner is intending to file a second habeas petition in this  
8 action, or, in the alternative, a civil rights complaint  
9 concerning conditions of confinement.

10 The Court will direct the Clerk's Office to provide  
11 Petitioner with a form habeas petition, a civil rights complaint  
12 form, and an application to proceed in forma pauperis.  
13 Petitioner will have thirty (30) days in which to either: 1)  
14 notify this Court that he is voluntarily dismissing this action;  
15 2) file a petition for writ of habeas corpus bearing the case  
16 number of this case, or 3) file a complaint bearing the case  
17 number of this proceeding, along with the filing fee or an in  
18 forma pauperis application, within thirty (30) days.

19 Further, although this Court has authorized Petitioner to  
20 proceed in forma pauperis in this action with respect to a habeas  
21 petition, it is anticipated that Petitioner may file a civil  
22 rights complaint in response to this order. In a civil rights  
23 action, the plaintiff must either pay the filing fee in full or  
24 file an application to proceed in forma pauperis. Therefore,  
25 either the fee or an application to proceed in forma pauperis  
26 with respect to a civil rights action must be submitted along  
27 with a complaint. Alternatively, Petitioner may file a notice of  
28 voluntary dismissal if he no longer wishes to pursue this action.

1 Fed. R. Civ. P. 41(a)(1).

2 Accordingly, it is HEREBY ORDERED that:

3 1. The Clerk's Office shall SEND Petitioner a form habeas  
4 petition for a state prisoner, a civil rights complaint form for  
5 an incarcerated person, and an application to proceed in forma  
6 pauperis; and

7 2. Within thirty (30) days from the date of service of this  
8 order, Petitioner shall: 1) FILE a notice of voluntary dismissal,  
9 or 2) FILE either a petition, or a complaint accompanied by  
10 either the filing fee in full or an application to proceed in  
11 forma pauperis; and

12 3. Petitioner is INFORMED that the failure to comply with  
13 this order will result in dismissal of this action, without  
14 prejudice.

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16 IT IS SO ORDERED.

17 **Dated: May 2, 2012**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**

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