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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JAIME L. ZEPEDA,	)	Case No.:1:13-cv-01086-AWI-BAM (HC)
	)	
Petitioner,	)	FINDINGS AND RECOMMENDATION
	)	REGARDING PETITION FOR WRIT OF HABEAS
v.	)	CORPUS, DIRECTING CLERK OF COURT TO
	)	TERMINATE ACTION
UNITED STATES OF AMERICA,	)	
	)	(ECF No. 1)
Respondent.	)	
	)	
	)	

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

**I.  
BACKGROUND**

Petitioner is currently in custody at the California Correctional Institution in Tehachapi, California, following his conviction imposed in the Monterey County Superior Court for first degree murder with a gun enhancement. (Petition, at 1.)

Petitioner has previously filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of California in case number 4:03-cv-

1 05668 PJH, which was denied on the merits in a reasoned decision on August 20, 2007.<sup>1</sup> The United  
2 States Court of Appeals for the Ninth Circuit denied a certificate of appealability on September 28,  
3 2009.

4 On April 22, 2011, Petitioner filed a second petition for writ of habeas corpus pursuant to 28  
5 U.S.C. § 2254 in the Northern District of California in case number 4:11-cv-01981-PJH, which was  
6 dismissed as a second or successive petition under 28 U.S.C. § 2244(b)(1) on August 30, 2011. The  
7 Ninth Circuit denied a certificate of appealability on October 19, 2012.

8 Petitioner filed the instant petition for writ of habeas corpus on July 15, 2013. Petitioner  
9 contends that he is the subject of an unconstitutional overbroad statutory scheme by way of the Anti-  
10 Terrorism and Effective Death Penalty Act (“AEDPA”) of 1996. More specifically, Petitioner  
11 contends that his first, fifth, eighth and fourteenth amendments have been violated by application of  
12 the AEDPA in the prior case filed in the United States District Court for the Northern District of  
13 California. Petitioner also contends his rights under the equal protection clause have been violated.

## 14 II. 15 DISCUSSION

16 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show  
17 that “he is in custody in violation of the Constitution . . . .” 28 U.S.C. § 2241(c)(3). A habeas corpus  
18 petition is the correct method for a prisoner to challenge the “legality or duration” of his confinement.  
19 Badea v. Cox, 931 F.2d 573, 574 (9th Cir.1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485  
20 (1973)); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. However,  
21 the petition must “allege facts concerning the applicant’s commitment or detention,” 28 U.S.C. §  
22 2242, and the Petitioner must make specific factual allegations that would entitle him to habeas corpus  
23 relief if they are true. O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.1990); United States v.  
24 Poopola, 881 F.2d 811, 812 (9th Cir.1989).

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26 <sup>1</sup> Pursuant to Rule 201 of the Federal Rules of Evidence, this Court may take judicial notice of filings in another case. See  
27 Biggs v. Terhune, 334 F.3d 910, 916 n.3 (9th Cir. 2003) (materials from a proceeding in another tribunal are appropriate  
28 for judicial notice); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (noting that a court may take judicial  
notice of “matters of public record”); United States v. Camp, 723 F.2d 741, 744 n.1 (9th Cir. 1984) (citing examples of  
judicially noticed public records).

1 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court is required to make a  
2 preliminary review of each petition for writ of habeas corpus. “If it plainly appears from the face of  
3 the petition . . . that the petitioner is not entitled to relief,” the Court must dismiss the petition. Rule 4  
4 of the Rules Governing § 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990).

5 **A. First, Fifth, and Fourteenth Amendment Rights**

6 Petitioner contends that section 2244(b)(1) on its face and as applied violates his first, fifth and  
7 fourteenth amendment rights because it infringes on his right to open courts and suspends the writ  
8 leaving no available remedy.

9 The Supreme Court has rejected the argument that AEDPA restrictions on successive habeas  
10 petitions are a “suspension” of the writ of habeas corpus contrary to article I, § 9, clause 2 of the  
11 federal Constitution. See Felker v. Turpin, 518 U.S. 651, 663-664 (1996).

12 Nor does AEDPA’s amendments to § 2244(b) violate the First, Fifth, and Fourteenth  
13 Amendments. The Supreme Court has stated that a procedural limitation “is not subject to  
14 proscription under the Due Process Clause unless it offends some principle of justice so rooted in the  
15 traditions and conscience of our people as to be ranked as fundamental.” Medina v. California, 505  
16 U.S. 437, 445 (1992) (quoting Patterson v. New York, 432 U.S. 197, 201-202 (1977)) (citations and  
17 internal quotation marks omitted).

18 In addition, although prisoners have a constitutional right to adequate, effective, and  
19 meaningful access to the courts, Bounds v. Smith, 430 U.S. 817, 821 (1977), such right is not abridged  
20 by the AEDPA. The restriction on successive petitions set forth in the AEDPA merely transfers from  
21 the district to the appropriate court of appeals the screening function which the district court had  
22 previously conducted, and it “constitute[s] a modified res judicata rule,” which is a permissible  
23 restriction on writs of habeas corpus rather than a suspension of the writ. Felker v. Turpin, 518 U.S. at  
24 664. As such, the AEDPA does not restrict a person from filing appropriate legal documents or deny  
25 them access to the courts, and Petitioner’s claim must be dismissed.

26 **B. Equal Protection Clause**

27 Petitioner also contends the section 2244(b)(1) violates the Equal Protection Clause because it  
28 discriminates against the “poor class.”

1 Petitioner fails to state facts sufficient to support his equal protection claim. Prisoners are  
2 protected under the Equal Protection Clause of the Fourteenth Amendment from invidious  
3 discrimination based on race, religion or membership in a protected class subject to restrictions and  
4 limitations necessitated by legitimate penological interests. Wolff v. McDonnell, 418 U.S. 539, 556  
5 (1974); Bell v. Wolfish, 441 U.S. 520, 545-546 (1979).

6 In this instance, Petitioner has failed to demonstrate that he is a member of a suspect class,<sup>2</sup>  
7 that section 2244(b) burdens a fundamental right, or that section 2244(b) is not rationally related to a  
8 legitimate state interest. Accordingly, Petitioner has failed to demonstrate an equal protection  
9 violation and his claim must be dismissed.

10 **III.**  
11 **RECOMMENDATION**

12 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 13 1. The instant petition for writ of habeas corpus be DISMISSED;
- 14 2. The Clerk of Court be directed to dismiss the instant petition; and
- 15 3. Petitioner's motion to consolidate this action with case number 1:12-cv-01085-LJO-  
16 JLT (PC), filed on August 5, 2013, be DENIED as moot in light of dismissal of the action.

17 This Findings and Recommendation is submitted to the assigned United States District Court  
18 Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of  
19 Practice for the United States District Court, Eastern District of California. Within thirty (30) days  
20 after being served with a copy, any party may file written objections with the court and serve a copy  
21 on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
22 Recommendation." Replies to the objections shall be served and filed within fourteen (14) days after

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28 <sup>2</sup> The "[Supreme] Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis." Maher v. Roe, 432 U.S. 464, 470-471 (1977).

1 service of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28  
2 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time  
3 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
4 1991).

5  
6 IT IS SO ORDERED.

7 Dated: September 4, 2013

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE