



1 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9<sup>th</sup> Cir. 1990); see also Hendricks v. Vasquez,  
2 908 F.2d 490 (9<sup>th</sup> cir. 1990). Summary dismissal is appropriate only where the allegations in the  
3 petition are vague or conclusory, palpably incredible, or patently frivolous or false. Hendricks v.  
4 Vasquez, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990) (*quoting Blackledge v. Allison*, 431 U.S. 63, 75-76  
5 (1977)). Under § 2243, it is the duty of the Court to screen out frivolous applications and to eliminate  
6 the burden that would be placed on the respondent by ordering an unnecessary answer. Allen v. Perini,  
7 424 F.2d 134, 141 (6<sup>th</sup> Cir. 1970); see Advisory Committee Notes to Rule 4 of the Rules Governing  
8 Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a  
9 petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's  
10 motion to dismiss, or after an answer to the petition has been filed.

11 Habeas corpus petitions must meet heightened pleading requirements. McFarland v. Scott, 512  
12 U.S. 849, 856 (1994); Hendricks v. Vasquez, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990). The petitioner shall set  
13 forth in summary form the facts supporting each of the grounds specified and shall state the relief  
14 requested. Rule 4 of the Rules Governing Section 2254 Cases. As mentioned above, a petition may be  
15 dismissed if the factual allegations are so palpably incredible or so patently frivolous or false as to  
16 warrant summary dismissal. Blackledge, 431 U.S. at 78. A claim is legally frivolous when it lacks an  
17 arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.  
18 Murphy, 745 F.2d 1221, 1227-1228 (9<sup>th</sup> Cir. 1984). The Court may, therefore, dismiss a claim as  
19 frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are  
20 clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim,  
21 whether inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d  
22 639, 640 (9<sup>th</sup> Cir. 1989); Franklin, 745 F.2d at 1227. The Advisory Committee Notes to Rule 8 indicate  
23 that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4,  
24 pursuant to the respondent's motion to dismiss, or after an answer to the petition has been filed.  
25 Advisory Committee Notes to Habeas Rule 8, 1976 Adoption; see Herbst v. Cook, 260 F.3d 1039 (9<sup>th</sup>  
26 Cir.2001).

27 Petitioner's claims should be denied as patently frivolous Ground one in the petition lists  
28 violations of the Maryland Toleration Act of 1649 and the Coercive Acts of 1774. (Doc. 1, p. 6).

1 Among others, Petitioner lists Prince Charles and Queen Elizabeth II of Great Britain, and Pope  
2 Francis, as respondents. Leaving aside the issue of whether habeas jurisdiction can be predicated upon  
3 British laws that pre-existed the formation of the United States, the claim is utterly without any legal or  
4 factual basis.

5 Ground two alleges “treason and levy against the United States,” and is also directed against the  
6 Prince of Wales, Great Britain. Again, the claim makes no sense and is patently frivolous. Ground  
7 three alleges that Petitioner’s “criminal record” is “unconstitutional,” and “is not grounds for  
8 sterilization or asexualization or any form of corporal punishment.” (Doc. 1, p. 28). To the extent that  
9 it is intelligible, it appears to allude to conditions of Petitioner’s confinement, not to the fact or duration  
10 of his confinement, as required for habeas jurisdiction. A habeas corpus petition is the correct method  
11 for a prisoner to challenge the “legality or duration” of his confinement. Badea v. Cox, 931 F.2d 573,  
12 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez  
13 v. Galaza, 334 F.3d 850, 859 (9<sup>th</sup> Cir. 2003)(“[H]abeas jurisdiction is absent, and a § 1983 action  
14 proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner’s  
15 sentence”); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

16 Ground four contends that Petitioner has been subjected to cruel and unusual punishment, in  
17 violation of the Eighth Amendment, based on discrimination against him on religious grounds by  
18 prison personnel. (Doc. 1, p. 47). However, Petitioner fails to present any details of such persecution.

19 Petitioner avers that, unless he is provided with an attorney, he does “not wish to proceed with  
20 this proceeding...” (Doc. 1, p. 50). Petitioner contends that he is unable to undertake legal research or  
21 retain a private attorney because of the “conditions of confinement.” (Id.). As relief, Petitioner  
22 requests a new criminal trial, as well as damages in the amount of \$1.5 billion. (Doc. 1, p. 57).  
23 Petitioner also requests a “name change” under California law, apparently to “Emiliano Zapata Satan.”  
24 (Id., p. 11; p. 57).

25 As mentioned, a claim is legally frivolous when it lacks an arguable basis either in law or in  
26 fact. Neitzke, 490 U.S. at 325; Franklin v. Murphy, 745 F.2d at 1227-1228. Here, Petitioner does not  
27 allege any claims that are cognizable under federal habeas corpus law, nor does he provide more than  
28 bare notice pleading, i.e., none of the claims are supported by specific factual allegations. Rather,

1 Petitioner makes wildly frivolous allegations that are completely without any supporting evidence or  
2 factual details. All of the claims in the petition are entirely conclusory.

3 In sum, the petition is absurd on its face and utterly without any legal basis in federal habeas  
4 law. The Court has pending before it at this time many legitimate habeas petitions from petitioners  
5 who are raising colorable and arguable federal constitutional claims. To further entertain Petitioner's  
6 patently frivolous contentions would do a disservice both to the federal courts as well as to those  
7 petitioners who are forced to wait for decisions in their cases while the Court addresses meritless claims  
8 such as those raised in the instant petition.<sup>1</sup>

9 **ORDER**

10 For the foregoing reasons, the Court **HEREBY DIRECTS** the Clerk of the Court to assign this  
11 case to a United States District Judge.

12 **RECOMMENDATION**

13 Accordingly, the Court **RECOMMENDS** that the Petition for Writ of Habeas Corpus (Doc. 1),  
14 be **DENIED** as frivolous.

15 This Findings and Recommendation is submitted to the United States District Court Judge  
16 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
17 Rules of Practice for the United States District Court, Eastern District of California. **Within 21 days**  
18 after being served with a copy of this Findings and Recommendation, any party may file written  
19 objections with the Court and serve a copy on all parties. Such a document should be captioned

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21 <sup>1</sup> Currently, in addition to this matter, Petitioner has at least four active habeas petitions in this Court (case numbers: 1:13-  
22 cv-01758-LJO-JLT; 1:14-cv-00318-AWI-SMS; 1:15-cv-01138-LJO-MJS; 1:15-cv-01192-AWI-JLT). Also, he has filed  
23 17 habeas petitions since 2013 that have been closed. (Case numbers: 1:13-cv-01789-SKO; 1:13-cv-02069-LJO-MJS;  
24 1:13-cv-02099-RJT; 1:14-cv-00043-LJO-GSA; 1:14-cv-00318-AWI-SMS; 1:14-cv-00328-AWI-BAM; 1:14-cv-00345-  
25 LJO-SAB; 1:14-cv-00360-LJO-SMS; 1:14-cv-00467-AWI-SAB; 1:14-cv-00509-LJO-SAB; 1:14-cv-00510-LJO-GSA;  
26 1:14-cv-00597-LJO-GSA; 1:15-cv-00269-AWI-JLT; 1:15-cv-00741-LJO-MJS; 2:13-cv-01254-EFB; 2:13-cv-02215-AC).  
27 As well, he has filed 29 cases since 2013 complaining about the conditions of his confinement. Of these, two remain  
28 active (case numbers: 1:13-cv-00762-DLB; 1:14-cv-00041-AWI-SAB) and the rest have been closed. (case numbers: 1:13-  
cv-00726-LJO-DLB; 1:13-cv-00761-MJS; 1:13-cv-01056-AWI-BAM; 1:13-cv-01078-LJO-MJS; 1:13-cv-01511-AWI-  
MJS; 1:13-cv-01736-AWI-MJS; 1:13-cv-01755-MJS; 1:14-cv-00042-AWI-JLT; 1:14-cv-00274-LJO-GSA; 1:14-cv-  
00275-LJO-MJS; 1:14-cv-00278-AWI-SAB; 1:14-cv-00351-LJO-SAB; 1:14-cv-00361-AWI-GSA; 1:14-cv-00748-DLB;  
1:14-cv-00874-AWI-BAM; 1:14-cv-00905-AWI-GSA; 1:14-cv-01439-AWI-SKO; 1:14-cv-01560-LJO-MJS; 1:15-cv-  
00344-AWI-DLB; 1:15-cv-01181-AWI-GSA; 1:15-cv-01182-LJO-GSA; 1:15-cv-01245-LJO-DLB; 2:13-cv-02212-CKD;  
2:13-cv-02214-AC; 2:15-cv-00024-EFB; 2:15-cv-00025-MCE-AC; 1:15-cv-01245-LJO-DLB.) Hence, it can hardly be  
argued that Petitioner has not had fair access to the federal courts while incarcerated.

1 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the Objections shall be  
2 served and filed **within ten days** (plus three days if served by mail) after service of the Objections.  
3 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The  
4 parties are advised that failure to file objections within the specified time may waive the right to appeal  
5 the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

6  
7 IT IS SO ORDERED.

8 Dated: September 29, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE