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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON FAVOR,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Case No. 1:16-cv-01922 MJS (HC)
FINDINGS AND RECOMMENDATION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

(Doc. 1)

ORDER DIRECTING CLERK OF COURT TO ASSIGN DISTRICT COURT JUDGE TO THE PRESENT MATTER

Brandon Alexander Favor (aka Brandon Favor-El) is a state prisoner confined at California Correctional Institution, Tehachapi, California. On December 27, 2016, Favor filed, pro se, what purports to be a petition for writ of habeas corpus (28 U.S.C. § 2254) on behalf of another inmate, Boydd Irving.

Favor is well known to this court. Since 2013, he has filed at least sixteen habeas petitions and seven § 1983 complaints in the Eastern District of California as well as filing additional petitions and complaints in the Central and Southern Districts of California. See Dickerson v. Vasquez, E.D. Cal. Case No. 1:16-cv-01889-DAD-SKO, ECF No. 10.)

1 **I. Background**

2 As with the complaints and petitions Favor has filed on his own behalf, the instant
3 Petition is rambling, incoherent, and fails to state any cognizable claim for relief under
4 federal habeas corpus law. See Rule 4 of the Rules Governing Section 2254 Cases;
5 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

6 The heading includes the name of the “Cochran Law Firm,” an actual law firm
7 doing business in Los Angeles, California, and nationwide. Instead of naming an
8 attorney and specifying his or her bar number, the filer is indicated as, “Favor-G60488-
9 Legal Assistant.” (Doc. No. 1 at 1.) “G60488” is the prisoner number assigned to Mr.
10 Favor by the California Department of Corrections and Rehabilitation. In addition to
11 listing himself as a paralegal and/or legal assistant, Favor lists Boydd Irving as a
12 Petitioner, but provides no explanation as how or why Petitioner, who is not an attorney
13 licensed to practice law in California, believes he may present claims on behalf of Irving
14 or anyone else..

15 One ground for relief is stated in the petition. (Doc. No. 1 at 3-4.) Ground one
16 states:

17 Non-statutory Relief: Petitioner herein on behalf of Mr. Boydd Irving
18 expressed legal concerns fuelled under uncontempt progresses where
19 either failure or denial set forth legal response, however, the act sought in
20 its relief soundly describes an assault or physical dismay. Mr. Boydd other
21 issues rather than direct innocence, its voidance may have resulted within
22 plea agreement as other issues addressed including penal conditions may
23 have possessed relief under discussions. Mr. Boydd suffers under
24 conviction or sentence innocently where relief provided may not
25 reasonable remain interpreted – petitioner seeks immediate relief and
26 bond discharge if applicable, incident factors do not demonstrate
27 innocence with Mr. Irving as expressly sought after. (Id.)

28 The facts allegedly supporting the claim are convoluted, illogical, essentially
incoherent, and fail to identify any basis for the assertion of any cognizable federal
habeas claim. The Petition does not provide sufficient information to enable the Court or
any respondent to comprehend what Petitioner is attempting to assert. (Doc. No. 1.)

Petitioner also provides no information regarding attempts to exhaust this claim in
state court. (Pet.)

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II. Discussion

A. Screening Standard

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" Rule 4 of the Rules Governing Section 2254 Cases.

The Ninth Circuit has allowed respondents to file a motion to dismiss in lieu of an answer if the motion attacks the pleadings for failing to exhaust state remedies or being in violation of the state's procedural rules. See, e.g., O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (using Rule 4 to evaluate motion to dismiss petition for failure to exhaust state remedies); White v. Lewis, 874 F.2d 599, 602-03 (9th Cir. 1989) (using Rule 4 as procedural grounds to review motion to dismiss for state procedural default); Hillery v. Pulley, 533 F.Supp. 1189, 1194 & n. 12 (E.D. Cal. 1982) (same). Thus, a respondent can file a motion to dismiss after the court orders a response, and the Court should use Rule 4 standards to review the motion. See Hillery, 533 F. Supp. at 1194 & n. 12.

Moreover, the Advisory Committee Notes to Rule 8 of the Rules Governing Section 2254 Cases indicates that the court may dismiss a petition for writ of habeas corpus either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an answer to the petition has been filed. However, a petition for writ of habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

As is the case, here, the Court may review the petition to determine if the allegations in a petition are vague, conclusory, palpably incredible, or patently frivolous or false. If so, summary dismissal is appropriate. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76, 97 S. Ct. 1621, 52

1 L. Ed. 2d 136 (1977)).

2 **B. Unauthorized Representation by a Non-Attorney**

3 Favor, who is not an attorney, may not act on behalf of petitioner or any other
4 party proceeding *pro se*. The privilege to proceed *pro se* is personal to the litigant and
5 does not extend to other parties or entities acting on his behalf. See Simon v. Hartford
6 Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008). “[A] non-attorney may appear only in her
7 own behalf.” Cato v. United States, 70 F.3d 1103, 1105 n.1 (9th Cir. 1995). Although a
8 person who is not an attorney may appear *pro se* on his own behalf, see 28 U.S.C. §
9 1654, “he has no authority to appear as an attorney for others than himself.” McShane v.
10 United States, 366 F.2d 286, 288 (9th Cir. 1966).

11 Although the court may take judicial notice of the CDCR inmate directory, which
12 reports that there is an inmate named Boydd Irving currently incarcerated by the
13 California Department of Corrections and Rehabilitation, the petition provides no basis
14 by which the Court may conclude that Favor filed the petition with Irving’s knowledge or
15 permission.

16 **C. Vague, Conclusory, Palpably Incredible, or Patently Frivolous or**
17 **False Allegations**

18 Summary dismissal is appropriate if the allegations in a petition are vague,
19 conclusory, palpably incredible, or patently frivolous or false. Hendricks v. Vasquez, 908
20 F.2d 490, 491 (9th Cir. 1990). Petitioner’s claims are incoherent and deficient. (See,
21 generally, Pet. at 3-4.) While Petitioner repeatedly uses terms including ‘evidence,’
22 ‘claim,’ and ‘natural and probable consequence,’ the Court is not able to discern what
23 Petitioner is attempting to convey, and what errors or legal violations he is attempting to
24 seek a remedy. The pending petition is “patently frivolous.” Hendricks, 908 F.2d at 491;
25 In re Hunter, 1995 U.S. Dist. LEXIS 6178, 1995 WL 261459, at *2 (N.D. Cal. 1995)
26 (dismissing habeas petition because it is “a dense and impenetrable mass of verbiage”).

27 Based on the foregoing, it is recommended that the case be summarily dismissed
28 without prejudice for lack of jurisdiction.

1 **D. Failure to State a Cognizable Claim**

2 28 U.S.C. 2241(c) provides that habeas corpus shall not extend to a prisoner
3 unless he is “in custody in violation of the Constitution.” Title 28 U.S.C. § 2254(a) states,
4 “[A] district court shall entertain an application for a writ of habeas corpus in behalf of a
5 person in custody pursuant to a judgment of a State court only on the ground that he is
6 in custody in violation of the Constitution or laws or treaties of the United States.” See
7 also Rule 1 of the Rules Governing Section 2254 Cases.

8 The Supreme Court has held that “the essence of habeas corpus is an attack by a
9 person in custody upon the legality of that custody.” Preiser v. Rodriguez, 411 U.S. 475,
10 484 (1973). To succeed in a petition pursuant to § 2254, a petitioner must demonstrate
11 that the adjudication of his claim in state court “resulted in a decision that was contrary
12 to, or involved an unreasonable application of, clearly established Federal law, as
13 determined by the Supreme Court of the United States; or resulted in a decision that was
14 based on an unreasonable determination of the facts in light of the evidence presented
15 in the State court proceeding.” 28 U.S.C. § 2254(d)(1), (2).

16 The habeas petition filed in this case fails to state a cognizable claim for federal
17 habeas relief. In addition to being vague, and filed on behalf of another inmate, it does
18 not allege a violation of the Constitution or federal law, nor does it argue that the
19 Petitioner is in custody in violation of the Constitution or federal law. While there is
20 mention of newly discovered evidence and innocence, the petition provides no
21 elaboration as to what the evidence is or how it supports a federal claim. The allegations
22 contained in the petition are insufficient to state a cognizable claim for habeas relief.

23 **III. Order and Recommendation**

24 Accordingly, it is RECOMMENDED that the petition be DISMISSED without leave
25 to amend. Further, the Court ORDERS the Clerk of Court to assign a District Court judge
26 to the instant matter.

27 These findings and recommendations are submitted to the United States District
28 Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636

1 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
2 Eastern District of California. Within thirty (30) days after being served with a copy, any
3 party may file written objections with the Court and serve a copy on all parties. Such a
4 document should be captioned "Objections to Magistrate Judge's Findings and
5 Recommendations." Replies to the objections shall be served and filed within fourteen
6 (14) days (plus three (3) days if served by mail) after service of the objections. The Court
7 will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).

8 The parties are advised that failure to file objections within the specified time may
9 waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834,
10 839 (9th Cir. 2014).

11
12 IT IS SO ORDERED.

13 Dated: January 27, 2017

/s/ Michael J. Seng
14 UNITED STATES MAGISTRATE JUDGE

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