



1 I recommend that the court dismiss the case without prejudice. Petitioner describes his  
2 sole claim as follows: “[T]o receive my 33% (F) status overdue (WG) (M) release credits.”  
3 ECF No. 1 at 2; *accord* ECF No. 1 at 7. He does not provide any other description of his claim. I  
4 construe this description to mean that petitioner sought sentence credits under California law  
5 based on his “Workgroup F” status and that CDCR denied his request. *See* Cal. Code Regs. tit.  
6 15, § 3044(b)(7); Cal. Penal. Code §§ 2933, 2933.3.<sup>1</sup> If CDCR misapplied California state law,  
7 that error, by itself, does not warrant habeas relief because this federal district court can grant  
8 habeas relief only if petitioner’s custody violates federal law. *See* 28 U.S.C. § 2254(a). Petitioner  
9 does not explain how the denial of sentence credit violates federal law, so he does not state a  
10 cognizable federal habeas claim.<sup>2</sup>

11 A federal district court may allow a federal habeas petitioner to file an amended petition  
12 when the petitioner fails to state a cognizable claim, but I recommend that the court not do so  
13 here. Absent narrow exceptions, petitioner must exhaust state-court remedies before seeking  
14 habeas relief in federal court. *See* 28 U.S.C. § 2254(b)(1)(A); *Murray v. Schriro*, 882 F.3d 778,  
15 807 (9th Cir. 2018). Petitioner filed his petition seven days after CDCR’s decision to deny him  
16 sentence credits, ECF No. 1 at 7; given this near-immediate turnaround, it is not possible that he  
17 has exhausted his claim in state court. The petition is subject to summary dismissal either  
18 through screening or via an early motion to dismiss, so any amendment to the petition would be  
19 futile. The recommended dismissal without prejudice allows petitioner to litigate his claim in  
20 state court and return to this court, if he has a cognizable federal habeas claim.

21 Finally, I recommend that the court not issue a certificate of appealability. A petitioner  
22 seeking a writ of habeas corpus has no absolute right to appeal a district court’s denial of a  
23 petition; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*

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25 <sup>1</sup> Petitioner is incarcerated at Sierra Conservation Center in California. In California, certain  
26 inmates assigned to conservation camps, such as inmate firefighters (Work Group F), can earn  
27 heightened sentence credit for their work. *See* Cal. Code Regs. tit. 15, § 3044(b)(7); Cal. Penal  
28 Code § 2933.3.

<sup>2</sup> Indeed, petitioner may have meant to file his petition in California state court rather than in this  
court; he used a California state court petition form. *See generally* ECF No. 1.

1 *Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254 Cases requires a district  
2 court to issue or deny a certificate of appealability when entering a final order adverse to a  
3 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th  
4 Cir. 1997). A certificate of appealability will not issue unless a petitioner makes “a substantial  
5 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires  
6 the petitioner to show that “jurists of reason could disagree with the district court’s resolution of  
7 his constitutional claims or that jurists could conclude the issues presented are adequate to  
8 deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; *see Slack v. McDaniel*,  
9 529 U.S. 473, 484 (2000). The petitioner must show “something more than the absence of  
10 frivolity or the existence of mere good faith.” *Miller-El*, 537 U.S. at 338. I find that reasonable  
11 jurists would neither disagree with our conclusion nor find that petitioner should be encouraged to  
12 proceed further.

13 **I. Order**

14 The clerk of court is directed to assign this case to a U.S. District Court Judge who will  
15 review the following findings and recommendations.

16 **II. Findings and Recommendations**

17 I recommend that the court dismiss the petition for a writ of habeas corpus, ECF No. 1, for  
18 lack of jurisdiction and decline to issue a certificate of appealability.

19 These findings and recommendations are submitted to the U.S. District Court Judge  
20 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of  
21 Practice for the United States District Court, Eastern District of California. Within fourteen days  
22 of the service of the findings and recommendations, any party may file written objections to the  
23 findings and recommendations with the court and serve a copy on all parties. That document  
24 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
25 District Judge will then review the findings and recommendations under 28 U.S.C.  
26 § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: September 25, 2019

  
UNITED STATES MAGISTRATE JUDGE

No. 202