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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 ZANE HUBBARD,

12 Petitioner,

13 v.

14 DAVID BAUGHMAN and XAVIER
15 BACERRA,

16 Respondents.
17

Case No. 1:19-cv-00287-JDP (HC)

FINDINGS AND RECOMMENDATIONS
THAT COURT DISMISS PETITION FOR
LACK OF JURISDICTION

ECF No. 1

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

18 Petitioner Zane Hubbard, a state prisoner without counsel, seeks a writ of habeas corpus
19 under 28 U.S.C. § 2254. ECF No. 1.¹ The matter is before the court for screening under Rule 4
20 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas
21 proceeding must examine the habeas petition and order a response to the petition unless it
22 “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d
23 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). The rule
24 allows courts to dismiss petitions that are patently frivolous, vague, conclusory, palpably
25 incredible, or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

26
27 ¹ Petitioner, who has incurred three strikes under the Prison Litigation Reform Act, *Hubbard v.*
28 *United States of America*, No. 1:14-cv-905, ECF No. 6 (E.D. Cal. June 30, 2014), has filed
multiple habeas petitions that do not challenge the legality of his custody. *See* Case Nos. 1:19-cv-
132, 1:19-cv-287, 1:19-cv-337.

1 I recommend that the court dismiss the case at screening. Petitioner raises one claim: that
2 the warden of his prison failed to allow petitioner to appear in court in a civil proceeding. *See*
3 ECF No. 1 at 6-8. This claim does not concern the legality of petitioner's confinement, so the
4 court lacks jurisdiction and cannot grant habeas relief. *See Nettles v. Grounds*, 830 F.3d 922, 934
5 (9th Cir. 2016). If petitioner wishes to litigate his claim, he must file a Section 1983 complaint,
6 *see id.*, and the complaint must contain allegations that would withstand screening, *see* 28 U.S.C.
7 § 1915A(a) and Fed. R. Civ. P. 8.

8 The court should decline to convert the petition into a Section 1983 complaint. Petitioner
9 has three strikes under the Prison Litigation Reform Act, *Hubbard v. United States of America*,
10 No. 1:14-cv-905, ECF No. 6 (E.D. Cal. June 30, 2014), so, before proceeding with a 1983 claim,
11 he would need either to satisfy the imminent-danger exception or to pay the full filing fee. *See*
12 *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007). Petitioner has done neither.
13 Furthermore, his allegations are conclusory.

14 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
15 court's denial of a petition; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253;
16 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254 Cases
17 requires a district court to issue or deny a certificate of appealability when entering a final order
18 adverse to a petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d
19 1268, 1270 (9th Cir. 1997). A certificate of appealability will not issue unless a petitioner makes
20 "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This
21 standard requires the petitioner to show that "jurists of reason could disagree with the district
22 court's resolution of his constitutional claims or that jurists could conclude the issues presented
23 are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *see Slack*
24 *v. McDaniel*, 529 U.S. 473, 484 (2000). The petitioner must show "something more than the
25 absence of frivolity or the existence of mere good faith." *Miller-El*, 537 U.S. at 338.

26 Reasonable jurists would not disagree that the petition here is an unauthorized successive
27 petition and that it should not proceed further. Thus, the court should decline to issue a certificate
28 of appealability.

The clerk of court is directed to assign this case to a U.S. District Court Judge.

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

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

No. 202