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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANDRA KISHOR,  
Plaintiff,  
v.  
STATE OF CALIFORNIA, et al.,  
Defendants.

No. 2:00-cv-1293 JAM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. On December 10, 2020, he filed a document entitled “Motion Renewing and Reopen with New Laws Evidence and Witness.” Plaintiff filed this action on June 12, 2000. On September 11, 2000, the previously-assigned magistrate judge found that plaintiff’s claims challenged the legality of his custody, rather than the conditions of his confinement. Plaintiff was then given the opportunity to file a habeas corpus petition in this action. When he did not do so, the case was dismissed without prejudice on December 19, 2000.

In this attempt to re-open his case, plaintiff is again raising challenges to his 1999 trial and subsequent conviction. As plaintiff was informed previously, these sort of challenges must be made in a petition for a writ of habeas corpus, not in a civil rights action under 42 U.S.C. § 1983. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

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1 This court notes that petitioner did file a habeas petition in this court in June 2003  
2 challenging the 2000 conviction. It was denied on the merits in 2007. See Kishor v. Attorney  
3 General of CA, No. 03-cv-1219 LKK CMK P, 2007 WL 2904237 (E.D. Cal. Oct. 3, 2007), rep.  
4 and reco. adopted, 2007 WL 4149327 (E.D. Cal. Nov. 19, 2007). Further, court records show that  
5 plaintiff filed at least five subsequent challenges to his conviction. See Case No. 2:06-cv-1592  
6 GEB KJM; Case No. 2:08-cv-2028 FCD JFM; Case No. 2:10-cv-3171 LKK KJN; Case No. 2:11-  
7 cv-2148 EFB; Case No. 2:19-cv-1556 TLN DB. Each case was dismissed for plaintiff's failure to  
8 demonstrate that he obtained prior authorization from the Ninth Circuit Court of Appeals to file a  
9 second or successive petition. See 28 U.S.C. § 2244(b); Felker v. Turpin, 518 U.S. 651, 656-57  
10 (1996). The same is true in this case. Plaintiff makes no showing that he has obtained  
11 authorization from the Court of Appeals to reopen this case and file a successive petition.

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion to reopen this  
13 case (ECF No. 14) be denied.

14 These findings and recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after  
16 being served with these findings and recommendations, any party may file written objections with  
17 the court and serve a copy on all parties. The document should be captioned "Objections to  
18 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be  
19 filed and served within seven days after service of the objections. The parties are advised that  
20 failure to file objections within the specified time may result in waiver of the right to appeal the  
21 district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: December 14, 2020

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24 DLB:9  
25 DB/prisoner-civil rights/kish1293.reopen fr

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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE