

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MARIO FLAVIO GARCIA,

Petitioner,

No. CIV S-10-0971 DAD P

vs.

KEN CLARK,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On May 17, 2010, petitioner filed a letter with the court indicating that this case was filed in error and was duplicative of his action in Garcia v. Clark, No. CIV S-10-0968 DAD P. (See Doc. No. 5.) After reviewing its own records, the court has confirmed that on April 21, 2010, petitioner filed a petition in Garcia v. Clark, No. CIV S-10-0968 DAD P, which contains allegations that are identical to those presented in this action.¹ Accordingly, due to the duplicative nature of the present action, the court will recommend that this petition be dismissed without prejudice.

////

¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to
2 randomly assign a United States District Judge to this action.

3 IT IS HEREBY RECOMMENDED that:

4 1. Petitioner's April 22, 2010 application for writ of habeas corpus (Doc. No. 1)
5 be dismissed without prejudice;

6 2. Petitioner's April 22, 2010 motion to proceed in forma pauperis (Doc. No. 2)
7 be denied as moot; and

8 3. Petitioner's April 22, 2010 motion for a stay and abeyance (Doc. No. 3) be
9 denied as moot.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
12 one days after being served with these findings and recommendations, petitioner may file written
13 objections with the court. The document should be captioned "Objections to Magistrate Judge's
14 Findings and Recommendations." Petitioner is advised that failure to file objections within the
15 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
16 F.2d 1153 (9th Cir. 1991).

17 DATED: May 24, 2010.

18
19 
20 _____
21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE

22 DAD:sj
23 garc0971.123