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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY CEVALLOS,  
Petitioner,  
v.  
RED BLUFF PAROLE UNIT,  
Respondent.

No. 2:12-cv-01433 DAD P

ORDER

Petitioner, who appears to be on parole, has filed an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has also consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF No. 4.)

I. First Amended Petition

On March 13, 2013, the court issued an order directing petitioner to file an amended petition because the claims and allegations set forth in his original habeas petition were in large part incomprehensible and difficult to decipher. It appeared from those allegations, however, that petitioner sought to challenge a judgment of conviction entered against him in 2010 for making a criminal threat in violation of California Penal Code § 422, with a hate crime sentencing enhancement imposed pursuant to California Penal Code § 422.75(a). In the March 13, 2013 order petitioner was advised of the requirements for the stating of a claim cognizable in a federal habeas action and was warned that the court would summarily dismiss his amended petition “[i]f

1 it plainly appears on the face of the petition . . . that the petitioner is not entitled to relief[.]”  
2 (ECF No. 18 at 3) (quoting Rule 4, Rules Governing §2254 Cases).

3 On April 2, 2013, petitioner filed an amended petition for federal habeas relief. (Doc. No.  
4 20). Unfortunately, the allegations set forth in that petition are as incomprehensible as those set  
5 forth by petitioner in his original petition. For example, in his amended petition petitioner  
6 presents eight grounds for relief, beginning with the first two as follows:

7 Ground one: I’m testifying that the prosecution, my Court  
8 appointed council [sic] and the judge surrendered a justice system  
to reclassify a purpose of processing information in a Court Rm.

9 Ground two: As a realized responsibility the purpose of this  
10 corrupted cooperation was governmentally interacted to transfer  
Authority to a blended in capitalistic environment undetected[.]

11 (ECF No. 20 at 4.) The remaining six grounds for relief stated in the amended petition are just as  
12 nonsensical as the first two. Therefore, based on the allegations of the amended petition and  
13 exhibits attached thereto, the court finds that petitioner is clearly not entitled to federal habeas  
14 relief and that his amended petition should be summarily dismissed pursuant to Rule 4 of the  
15 Rules Governing §2254 Cases.

## 16 II. Other Matters Pending Before the Court

17 Because petitioner had inundated this court with motions following the filing of his  
18 original petition, in the court in its order of March 13, 2013 had directed petitioner to file no  
19 additional motions until the court had reviewed his amended petition and issued an order  
20 directing respondent to respond thereto. Nonetheless, petitioner has filed four additional motions  
21 with the court which will be addressed below.

22 On March 13, 2013, petitioner filed a motion “for a separation from the Superior Court  
23 Room County of Glenn.” (ECF No. 19 at 1.) On May 10, 2013, petitioner filed a motion styled  
24 as a, “Motion To Preserve This Information.” (ECF No. 21.) On May 31, 2013, petitioner filed a  
25 motion styled as a “Motion To Make Respondent Respond To Petitioner.” Each of these motions  
26 will be denied both as incomprehensible and as having been rendered moot by the court’s  
27 summary dismissal of the amended petition.

28 /////

1           Petitioner’s fourth motion, filed on July 12, 2013, is styled as a “Motion To Recuse  
2 Magistrate Judge Official Of This Case.” (ECF No. 23.) As best the court can determine, it  
3 appears that in that motion petitioner is expressing a belief that he has received “prejudicial  
4 treatment” in this action, although the basis for petitioner’s contention in this regard is unclear at  
5 best. (ECF No. 23 at 1.) Petitioner’s motion to recuse will also be denied. Under 28 U.S.C. §  
6 144, a party who believes “that the judge before whom the matter is pending has a personal bias  
7 or prejudice either against him or in favor of any adverse party” must provide an affidavit setting  
8 out the following:

9           The affidavit shall state the facts and the reasons for the belief that  
10           bias or prejudice exists, and shall be filed not less than ten days  
11           before the beginning of the term at which the proceeding is to be  
12           heard, or good cause shall be shown for failure to file it within such  
13           time. A party may file only one such affidavit in any case. It shall  
14           be accompanied by a certificate of counsel of record stating that it  
15           is made in good faith.

16 28 U.S.C. § 144. Petitioner has not complied with the requirements of § 144 by providing a  
17 proper and timely affidavit. Moreover, it appears that petitioner is seeking the undersigned’s  
18 recusal because of the court’s rulings in this action. However, as the United States Supreme  
19 Court has noted, “judicial rulings alone almost never constitute a valid basis for a bias or  
20 partiality motion.” Liteky v. United States, 510 U.S. 540, 555 (1994). Instead, the judicial  
21 rulings are a basis for appeal, not recusal. Id. (“In and of themselves . . . [judicial rulings] cannot  
22 possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances  
23 evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is  
24 involved. Almost invariably, they are proper grounds for appeal, not for recusal.”); Leslie v.  
25 Grupo ICA, 198 F.3d 1152, 1160 (9th Cir. 1999) (“Leslie’s allegations stem entirely from the  
26 district judge’s adverse rulings. This is not an adequate basis for recusal.”) (citations omitted).

27           Accordingly, petitioner’s motion for recusal will also be denied.

### 28 III. Certificate of Appealability

          Rule 11 of the Federal Rules Governing Section 2254 Cases states that “[t]he district court  
must issue or deny a certificate of appealability when it enters a final order adverse to the  
applicant.” A certificate of appealability should be granted for any issue that petitioner can

1 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different  
2 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
3 290 F.3d 1006, 1010 (9th Cir.2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). For  
4 the reasons set forth above, the court declines to issue a certificate of appealability in this case.

5  
6 CONCLUSION

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Petitioner’s first amended petition is summarily dismissed. See Rule 4, Rules  
9 Governing §2254 Cases;

10 2. Petitioner’s March 13, 2013 motion “for separation from superior court room County  
11 of Glenn” (ECF No. 19) is denied;

12 3. Petitioner’s May 10, 2013 “motion to preserve information” (ECF No. 21) is denied;

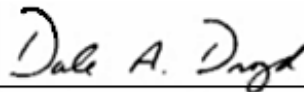
13 4. Petitioner’s May 31, 2013 “motion to make respondent respond to petitioner” (ECF  
14 No. 22) is denied;

15 5. Petitioner’s July 12, 2013 “motion to recuse the magistrate judge” (ECF No. 23) is  
16 denied;

17 6. The Clerk of the Court is directed to serve a copy of the amended petition filed in this  
18 case together with a copy of this order on the Attorney General of the State of California and to  
19 close this action; and

20 7. The court declines to issue a certificate of appealability.

21 Dated: January 24, 2014

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23 \_\_\_\_\_  
24 DALE A. DROZD  
25 UNITED STATES MAGISTRATE JUDGE

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