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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN T. CARIDAD,
Petitioner,
v.
HARRY OREOL.,
Respondent.

No. 2:15-cv-0403 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a civil detainee proceeding pro se and in forma pauperis, has filed an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 9; see ECF No. 8.)

In considering whether to dismiss an action as frivolous pursuant to § 1915(d), the court has especially broad discretion. Conway v. Fugge, 439 F.2d 1397 (9th Cir. 1971). The Ninth Circuit has held that an action is frivolous if it lacks arguable substance in law and fact. Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court’s determination of whether a complaint or claim is frivolous is based on “an assessment of the substance of the claim presented, i.e., is there a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded.” Franklin, 745 F.2d at 1227 (citations omitted).

The amended petition was filed with the court on April 30, 2015. Court records reveal that on June 23, 2014, petitioner filed a petition in another habeas action, challenging the same 2001 conviction for arson and residential burglary. Caridad v. Oreol, No. 2:14-cv-1847 KJM AC

1 (E.D. Cal.), ECF No. 27.¹ Respondent in that case has filed a motion to dismiss the petition,
2 which is currently pending. Id., ECF No. 40. Due to the duplicative nature of the present action,
3 the court finds it frivolous and, therefore, will recommend that this action be dismissed. 28
4 U.S.C. § 1915(d).

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall assign a district
6 judge to this action.

7 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
8 Fed. R. Civ. P. 41(b).

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

16 Dated: May 11, 2015

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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27 _____
28 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).