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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GILBERTO JUAREZ,

No. C-13-0386 EMC (pr)

Petitioner,

v.

ORDER OF DISMISSALPRISON'S CEO; *et al.*,Respondents.

Petitioner, a prisoner incarcerated at the Correctional Training Facility in Soledad, California, filed this civil action using a form petition for writ of habeas corpus for state courts. The petition is largely incoherent; those parts of it that can be understood appear to (1) challenge Petitioner's 1995 conviction from Santa Clara County Superior Court, (2) complain about a federal court clerk's failure to comply with a judge's order, and (3) complain about the resolution of his earlier actions in federal court.

Petitioner's challenge to his 1995 conviction is **DISMISSED** because he has not obtained permission from the Ninth Circuit to file a new petition challenging his conviction. Petitioner's earlier habeas petition, *Juarez v. Director of Corrections*, No. C 05-019 RMW, was dismissed as barred by the statute of limitations. As the Court explained in the order of dismissal in *Juarez v. Prison's CEO*, No. 12-2855 EMC, Petitioner cannot file a new action challenging the 1995 conviction unless and until he obtains from the Ninth Circuit authorizing this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(a).

Petitioner's claim that a deputy clerk in this Court failed to comply with Judge Ronald Whyte's order is **DISMISSED** for failure to state a claim upon which relief may be granted.

1 Petitioner purports to assert the claim under 5 U.S.C. § 552(a), the Freedom of Information Act
2 ("FOIA"). FOIA generally is limited to agencies of the executive branch of the federal government,
3 and does not include federal courts. *See* 5 U.S.C. § 551(1)(B); *Warth v. Dep't of Justice*, 595 F.2d
4 521, 523 (9th Cir. 1979); *see also United States v. Miramontez*, 995 F.2d 56, 59 n.3 (5th Cir. 1993)
5 (federal courts expressly excluded from definition of "agency"). The allegation that the deputy
6 clerk's conduct violated FOIA is meritless because FOIA does not apply to her. Construing the
7 claim to be a claim under 42 U.S.C. § 1983 would not help Petitioner. A court order, standing alone,
8 cannot serve as the basis for liability under 42 U.S.C. § 1983 because such orders do not create
9 "rights, privileges, or immunities secured by the Constitution and laws" of the United States, the
10 violation of which is an essential element of a § 1983 action. *See Green v. McKaskle*, 788 F.2d
11 1116, 1123-24 (5th Cir. 1986) (remedial decrees are means by which unconstitutional conditions are
12 corrected but do not create or enlarge constitutional rights).

13 The petition contains a confusing series of allegations about the resolution of several of
14 Petitioner's earlier cases filed in this Court. A litigant who is dissatisfied about the resolution of his
15 case may file an appeal, but cannot simply file a new action in the district court to complain about
16 the outcome in the earlier case. *Cf. Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1392-
17 93 (9th Cir. 1987) ("To allow a district court to grant injunctive relief against a bankruptcy court or
18 the district court . . . would be to permit, in effect, a 'horizontal appeal' from one district court to
19 another" that would be improper).

20 Finally, it appears that Petitioner wants to assert a FOIA claim. A petition for writ of habeas
21 corpus is not the appropriate way to assert a FOIA claim. Petitioner may file a new civil action
22 asserting a FOIA claim, which he must prepare on his own as the court does not have a form FOIA
23 complaint to send him. Petitioner is cautioned that FOIA does not apply to state agencies. *See St.*
24 *Michael's Convalescent Hosp. v. California*, 643 F.2d 1369, 1373 (9th Cir. 1981). He may wish to
25 pursue any rights he has under the California Public Records Act, *see* Cal. Gov't Code § 6250 et
26 seq., with regard to records held by state agencies.

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For the foregoing reasons, the petition for writ of habeas corpus is **DISMISSED**. Petitioner's *in forma pauperis* application is **GRANTED**. (Docket # 3.) The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: April 2, 2013



EDWARD M. CHEN
United States District Judge