

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
27
28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADRIAN T. MOSQUEDA, No. C 10-0595 CW (PR)

Petitioner, ORDER OF DISMISSAL

v.

FRANCISCO JAQUEZ, Warden, et al.,

Respondents.

The instant action was commenced when Petitioner filed a document captioned "Petition For A Writ of Habeas Corpus," challenging his indeterminate placement in the Pelican Bay State Prison Security Housing Unit based on his validation as a gang member.

Thereafter, the Court issued an Order dismissing the petition with leave to amend for Petitioner to allege a cause of action under 42 U.S.C. § 1983, because Petitioner's claims were not cognizable in federal habeas corpus. When Petitioner failed to file a timely response to the Court's Order, the Court dismissed the action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

Subsequently, Petitioner filed a motion for reconsideration of the Order of Dismissal on the ground that he had handed his amended petition to prison officials for mailing prior to the filing deadline, even though the amended petition was not filed until the deadline had passed.

On March 29, 2011, the Court granted Petitioner's motion for reconsideration and reopened the action. The Court found that the

1 claim raised in the amended petition was not cognizable, but
2 granted Petitioner leave to file, within thirty days of the Court's
3 Order, a completed civil rights complaint form and a new in forma
4 pauperis application. The Court informed Petitioner that his
5 failure to do so within the thirty-day deadline would result in the
6 dismissal of this action without prejudice.

7 More than thirty days have passed and Petitioner has not filed
8 a civil rights complaint, paid the filing fee, returned the in
9 forma pauperis application or otherwise communicated with the
10 Court. Accordingly, this action is DISMISSED WITHOUT PREJUDICE.

11 The Clerk of the Court shall close the file.

12 IT IS SO ORDERED.

13 Dated: 5/25/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ADRIAN T. MOSQUEDA,

5 Plaintiff,

6 v.

7 FRANCISCO JAQUEZ et al,

8 Defendant.

Case Number: CV10-00595 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on May 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Adrian Tamayo Mosqueda E-08547
16 D7-109
17 Pelican Bay State Prison
18 P.O. Box 7500
19 Crescent City, CA 95531

20 Dated: May 25, 2011

21 Richard W. Wieking, Clerk
22 By: Nikki Riley, Deputy Clerk
23
24
25
26
27
28