

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

3  
 4 JEROME L. GRIMES,

No. C 11-1815 CW

5                                    Plaintiff,

ORDER DENYING  
 PETITION TO  
 PROCEED IN FORMA  
 PAUPERIS (Docket  
 No. 2)

6                                    v.

7 SAN FRANCISCO CHIEF OF POLICE;  
 8 SAN FRANCISCO POLICE DEPARTMENT;  
 and ATTORNEY GENERAL OF THE STATE  
 9 OF CALIFORNIA,

10                                    Defendants.

11 \_\_\_\_\_/  
 Plaintiff Jerome L. Grimes has applied to proceed in forma  
 12 pauperis.<sup>1</sup> Having considered all of the papers filed by  
 13 Plaintiff, the Court DENIES the motion for in forma pauperis  
 14 status (Docket No. 2).

15                                    Pursuant to 28 U.S.C. § 1915, a district court may authorize  
 16 the commencement of a civil action in forma pauperis if the court  
 17 is satisfied that the would-be plaintiff cannot pay the filing  
 18 fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). The  
 19 court may deny in forma pauperis status, however, if it appears  
 20 from the face of the proposed complaint that the action is  
 21 factually or legally frivolous or without merit. O'Loughlin v.  
 22 Doe, 920 F.2d 614, 616 (9th Cir. 1990); Tripati v. First National  
 23

24 \_\_\_\_\_  
 25                                    <sup>1</sup> On December 9, 2005, this Court entered a pre-filing order  
 26 regarding the cases filed by Plaintiff. The Court has previously  
 27 conducted a pre-filing review of the complaint filed in the  
 28 instant case and found that it did not concern one of the matters  
 mentioned in the pre-filing order. See Docket No. 1, Case No.  
 11-MC-80068.

1 Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987). An in forma  
2 pauperis complaint is frivolous if it has "no arguable basis in  
3 fact or law." O'Loughlin, 920 F.2d at 617; Tripati, 821 F.2d at  
4 1379; Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984).

5 The Court finds that Plaintiff's complaint is legally  
6 frivolous.

7 California Penal Code section 12370(a) makes it a felony for  
8 any person who has been convicted of a violent felony to wear body  
9 armor. However, under California Penal Code section 12370(b),  
10 "any person whose employment, livelihood, or safety is dependent  
11 on the ability to legally possess and use body armor" and "who is  
12 subject to the prohibition imposed by subdivision (a) due to a  
13 prior violent felony conviction" can "file a petition with the  
14 chief of police or county sheriff of the jurisdiction in which he  
15 or she seeks to possess and use the body armor for an exception to  
16 this prohibition." Cal. Penal Code § 12370(b). "The chief of  
17 police or sheriff may reduce or eliminate the prohibition, impose  
18 conditions on reduction or elimination of the prohibition, or  
19 otherwise grant relief from the prohibition as he or she deems  
20 appropriate," based on findings that "the petitioner is likely to  
21 use body armor in a safe and lawful manner" and "has a reasonable  
22 need for this type of protection under the circumstances." Id.

23 Plaintiff files his complaint as a "petition for a permit to  
24 wear body armor" pursuant to California Penal Code  
25 section 12370(b) and names as Respondents the San Francisco Chief  
26 of Police, the San Francisco Police Department and the California  
27 Attorney General. He alleges that he has a felony conviction and  
28 attaches what he states is his "San Francisco Police Department

1 Criminal History Record." He also argues that he should be  
2 granted a permit to wear body armor because he is in imminent  
3 danger of serious harm. Plaintiff, however, does not allege that  
4 he has file a relevant petition with Chief of Police or with the  
5 Sheriff's Department for a permit, been denied one, that such  
6 denial was wrongful or that Respondents have violated his rights  
7 in any way. He also does not allege that California Penal Code  
8 section 12370 is facially unconstitutional in any way. If  
9 Plaintiff seeks a determination that he should be allowed relief  
10 from the prohibition contained in section 12370(a), he must begin  
11 by filing a petition with the appropriate chief of police or  
12 county sheriff.

13 Finally, Plaintiff labels his complaint as a petition for a  
14 writ of habeas corpus. However, the relief that Plaintiff seeks  
15 is not cognizable in a habeas petition. "The essence of habeas  
16 corpus is an attack by a person in custody upon the legality of  
17 that custody, and . . . the traditional function of the writ is to  
18 secure release from illegal custody." Burnett v. Lampert, 432  
19 F.3d 996, 999 (9th Cir. 2005) (internal quotation marks and  
20 citation omitted). Plaintiff does not claim that he is in custody  
21 in violation of the Constitution or federal laws. See 28 U.S.C.  
22 § 2254(a) (providing that federal courts may consider a habeas  
23 petition from a state prisoner "only on the ground that he is in  
24 custody in violation of the Constitution or laws or treaties of  
25 the United States").

26 Accordingly, Plaintiff's request to proceed in forma pauperis  
27 is denied without prejudice. If Plaintiff does not pay the  
28 regular filing fee for a civil case within thirty days of the date

1 of this Order, the Court will dismiss the action without  
2 prejudice.

3 IT IS SO ORDERED.

4  
5 Dated: 2/25/2013

  
CLAUDIA WILKEN  
United States District Judge