

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 JAMES EVANS, JR.,

No. C 11-04636 SBA (PR)

4 Petitioner,

ORDER OF DISMISSAL

5 v.

6 STATE OF CALIFORNIA, et al.,

7 Respondents.
8 _____/

9 This action was opened in error when the Court received a habeas petition form that was
10 intended to be filed in a previously-filed action -- Case No. C 11-3129 SBA (PR). Petitioner had
11 only filed a document entitled, "Writ of Execution or Writ of Error," in Case No. C 11-3129 SBA
12 (PR). In an Order dated September 8, 2011, the Court granted Petitioner leave to proceed in forma
13 pauperis (IFP), and dismissed the petition with leave to amend. Petitioner was directed to file an
14 amended petition on the Court's habeas petition form no later than thirty days from the date of that
15 Order. Also on September 8, 2011, Petitioner filed the aforementioned habeas petition form, which
16 was filed in Case No. C 11-4636 SBA (PR). Therefore, as mentioned above, a new action was
17 opened. Petitioner then filed his amended petition in Case No. C 11-3129 SBA (PR) on September
18 22, 2011.

19 Petitioner currently has two separate habeas actions pending, although he meant to file only
20 one action. Accordingly, the Clerk is directed to remove Petitioner's habeas petition form from this
21 action and to file it in his previously-filed action, Case No. C 11-3129 SBA (PR). The Clerk is
22 further directed to entitle the habeas petition form as his "supplemental habeas petition," and mark it
23 as filed on September 19, 2011, the date it was received by the Court. The Court will review his
24 supplemental habeas petition in a separate written Order in Case No. C 11-3129 SBA (PR). The
25 present action is DISMISSED because it was opened in error. No filing fee is due. Petitioner's
26 motion for leave to proceed IFP (docket no. 3) is terminated as moot. The Clerk shall close the file.

27 IT IS SO ORDERED.

28 DATED: 10/28/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAMES EVANS JR,
Plaintiff,

Case Number: CV11-04636 SBA

CERTIFICATE OF SERVICE

v.

STATE OF CA et al,
Defendant.

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

That on October 31, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Evans F-06497
California State Prison - Corcoran
P.O. Box 8800
Corcoran, CA 93212-8309

Dated: October 31, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk