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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,  
Petitioner,  
v.  
JAQUEZ FRANCISCO,  
Respondent.

Case No. [16-cv-04763-PJH](#)

**ORDER GRANTING LEAVE TO  
PROCEED IN FORMA PAUPERIS AND  
FOR PETITIONER TO SHOW CAUSE**

Re: Dkt. No. 3

United States District Court  
Northern District of California

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis. Petitioner challenges a 2005 conviction from the Lake County Superior Court. However, court records indicate that petitioner already filed a habeas petition in this court challenging the same conviction. *See Seals v. Jaquez*, Case No. 10-cv-3707-PJH. Petitioner's case was dismissed with prejudice as barred by the statute of limitations and was affirmed by the Ninth Circuit. This appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to

1 establish by clear and convincing evidence that, but for  
2 constitutional error, no reasonable factfinder would have  
3 found the applicant guilty of the underlying offense.

4 28 U.S.C. § 2244(b)(2).

5 “Before a second or successive application permitted by this section is filed in the  
6 district court, the applicant shall move in the appropriate court of appeals for an order  
7 authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). It  
8 does not appear that petitioner has received authorization from the Ninth Circuit to file  
9 this petition, therefore he will be ordered to show cause why this case should not be  
10 dismissed.

### 11 **CONCLUSION**

12 1. Petitioner’s motion for leave to proceed in forma pauperis (Docket No. 3) is  
13 **GRANTED.**

14 2. Petitioner must show cause by **September 22, 2016**, why this case should  
15 not be dismissed as successive. Failure to file a response will result in this case being  
16 dismissed.

17 **IT IS SO ORDERED.**

18 Dated: August 29, 2016



19 \_\_\_\_\_  
20 PHYLLIS J. HAMILTON  
21 United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,  
Plaintiff,  
v.  
FRANCISCO JAQUEZ,  
Defendant.

Case No. [16-cv-04763-PJH](#)

**CERTIFICATE OF SERVICE**


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 August 29, 2016, 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.

Michael I Brown-Seals ID: #V-77488  
Pelican Bay State Prison C-1-A#102 SHU  
P.O. Box 7500  
Crescent City, CA 95532-7000

Dated: August 29, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
Nichole Peric, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON