

**FILED**

JUL 20 2012

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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

MICHAEL ALAN YOCOM,

Petitioner,

vs.

RANDY GROUNDS, Warden,

Respondent.

No. C 10-03806 EJD (PR)

ORDER TO SHOW CAUSE;  
 ADDRESSING PENDING MOTIONS

(Docket Nos. 28, 31 & 32)

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court granted Respondent's motion to dismiss the petition as a mixed petition, and granted Petitioner leave to file an amended petition containing only exhausted claims. Petitioner filed an amended petition on March 19, 2012. (Docket No. 27.)

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28

1 U.S.C. § 2254(a).

2 It shall “award the writ or issue an order directing the respondent to show cause  
3 why the writ should not be granted, unless it appears from the application that the  
4 applicant or person detained is not entitled thereto.” Id. § 2243.

5 B. Legal Claims

6 Below are Petitioner’s cognizable and fully exhausted claims.

7 Petitioner’s first claim involves a Rules Violation Report (“RVR”) issued on  
8 June 30, 2009, for “disrespect to staff” when he called a prison official a “fucking  
9 bitch.” (Am. Pet. at 6.) Petitioner contends that not only was he provoked by “staff  
10 misconduct,” but that he was also “totally out of character” because his anti-psychotic  
11 drugs had been taken away. (Id.) Petitioner claims that he was denied his right to state  
12 and federal due process when he was denied his right to staff assistance, a mental health  
13 assessment, and the right to call a supporting witness to testify. (Id., Attach. at 2.)  
14 Petitioner was assessed credit forfeiture of 30 days. (Am. Pet. at 6.)

15 Petitioner’s second claim challenges an RVR issued on August 18, 2009, for  
16 “disobeying a direct order.” (Id.) Petitioner again claims that he was “totally out of  
17 his character” due to lack of proper medication. Petitioner again claims that he was  
18 provoked by staff misconduct when prison officials reneged on an agreement to allow  
19 Petitioner access to the law library one day a week during his job assignment. (Id.,  
20 Attach. at 5.) Petitioner claims that he was denied staff assistance, a mental health  
21 assessment, and the right to call the reporting employee as a witness. (Id. at 2.)  
22 Petitioner was found guilty, and punished with a credit forfeiture of 30 days. (Am. Pet.  
23 at 6.)

24 C. Pending Motions

25 Petitioner’s motion for reconsideration and demand for hearing, (Docket  
26 No. 28), and motion for case conference, (Docket No. 31), are DENIED without  
27 prejudice as premature. The Court will sua sponte consider whether a hearing is  
28 necessary once the matter is fully briefed.

Petitioner's motion for ruling on petition and motion to merge the habeas action with civil rights action, Case No. 10-03609 SBA (PR), (Docket No. 32), is DENIED. The Court will rule on the merits of Petitioner's claims once the matter is fully briefed. Furthermore, it appears that the civil action was closed and judgment entered in favor of defendants on March 30, 2012.

### CONCLUSION

For the foregoing reasons, the Court

1. The Clerk shall serve by certified mail a copy of this order and the amended petition, (Docket No. 27), and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the court and serve on Petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the relevant prison records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty (30) days** of his receipt of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the court and serve on Respondent an opposition or statement of non-opposition within **thirty (30) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any opposition.

1           4.       Petitioner is reminded that all communications with the court must be  
2 served on Respondent by mailing a true copy of the document to Respondent's counsel.  
3 Petitioner must keep the court and all parties informed of any change of address by  
4 filing a separate paper captioned "Notice of Change of Address." He must comply with  
5 the court's orders in a timely fashion. Failure to do so may result in the dismissal of this  
6 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

7           This order terminates Docket Nos. 28, 31 and 32.

8  
9 DATED: \_\_\_\_\_

7/19/12



EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN YOCOM,

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

Case Number: CV10-03806 EJD

**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 7/20/12, 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 Alan Yocom  
20731 Rd. 254  
P.O. Box 690  
Strathmore, CA 93267

Dated: 7/20/12

Richard W. Wieking, Clerk  
By: Elizabeth Garcia, Deputy Clerk