

**United States District Court**

For the Northern District of California

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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES D. CHAVEZ, ) No. C 12-01017 EJD (PR)  
Petitioner, ) ORDER TO SHOW CAUSE;  
vs. ) DENYING MOTION FOR LEAVE TO  
WARDEN, ) PROCEED *IN FORMA PAUPERIS* AS  
Respondent. ) MOOT  
\_\_\_\_\_) (Docket No. 3)

Petitioner, a California prisoner currently incarcerated at the Pelican Bay State Prison in Crescent City, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the forfeiture of good time credits. Petitioner filed a motion for leave to proceed in forma pauperis, (Docket No. 3), and then subsequently paid the filing. (See Docket No. 4.)

**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.”

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 Petitioner alleges that he was wrongfully found guilty of a Rules Violation  
7 Report for “harassment for another person... either directly or indirectly through the use  
8 of th email or other means.” (Pet. at 3.) Petitioner asserts that the evidence does not  
9 support the guilty finding. Petitioner was assessed 30 days credit forfeiture.<sup>1</sup> Liberally  
10 construed, Petitioner’s claim appears colorable under § 2254 as a violation of  
11 Petitioner’s right to due process and merits an answer from Respondent. See Young v.  
12 Kenny, 907 F.2d 874, 876-78 (9th Cir. 1990), cert. denied, 498 U.S. 1126 (1991).

13

14 **CONCLUSION**

15 For the foregoing reasons,

16 1 The Clerk shall serve by certified mail a copy of this order and the  
17 petition, and all attachments thereto, on Respondent and Respondent’s attorney, the  
18 Attorney General of the State of California. The Clerk also shall serve a copy of this  
19 order on Petitioner.

20 2. Respondent shall file with the court and serve on petitioner, within **sixty**  
21 (**60**) **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of  
22 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
23 should not be issued. Respondent shall file with the answer and serve on Petitioner a  
24 copy of all portions of the state trial record that have been transcribed previously and  
25 that are relevant to a determination of the issues presented by the petition.

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27 <sup>1</sup> Petitioner was also assessed 90 days forfeiture of canteen privileges which  
28 were restored at the Director’s Level of review.

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

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

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

17           5.     Petitioner's motion for leave to proceed in forma pauperis is  
18 DENIED as moot because he paid the filing fee. (Docket No. 3.)

19           This order terminates Docket No. 3.

20           21 DATED: \_\_\_\_\_ 6/18/2012

22           EDWARD J. DAVILA  
23           United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES D CHAVEZ,

Case Number: CV12-01017 EJD

Petitioner,

**CERTIFICATE OF SERVICE**

v.

WARDEN,

Respondent.

/

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

6/19/2012

That on \_\_\_\_\_, 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 D. Chavez T 27420  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA 95531

Dated: \_\_\_\_\_ 6/19/2012

Richard W. Wiking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk