

(<sup>11</sup> ATTACHMENT (0) 11)  
UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

NOV 5 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ZANE HUBBARD,

Petitioner-Appellant,

v.

EDMUND G. BROWN, Jr. and THE  
STATE JUSTICE INSTITUTE ACT OF  
1984,

Respondents-Appellees.

No. 18-15620

D.C. No. 1:18-cv-00181-LJO-SKO  
Eastern District of California,  
Fresno

ORDER

Before: TROTT and WARDLAW, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

*Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

*Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

**DENIED.**

(11 ATTACHMENT(S) (E) 11)  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Petitioner,

v.

EDMUND G. BROWN, JR. & THE  
STATE JUSTICE INSTITUTE ACT OF  
1984,

Respondents.

No. 1:18-cv-00181-LJO-SKO HC

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATION THAT THE COURT  
DENY THE PETITION FOR WRIT OF  
HABEAS CORPUS**

**(Doc. 5)**

Petitioner Zane Hubbard is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On February 20, 2018, the Magistrate Judge filed Findings and Recommendations in which she recommended that the Court dismiss the petition and deny a certificate of appealability. The Findings and Recommendations, which was served on Petitioner on the same date, provided that objections could be served within thirty days. Petitioner filed objections on March 12, 2018.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed the entire file *de novo*, the Court finds that the findings and recommendations are supported by the record and proper analysis. The Court declines to modify the findings and recommendations

(*" ATTACHMENTS (E) "*)

1 based on any points raised in the objections.

2 Accordingly, the Court hereby ORDERS that the findings and recommendations filed  
3 February 20, 2018, be adopted in full and the petition be DISMISSED. The Court DECLINES to  
4 issue a certificate of appealability.  
5

6  
7 IT IS SO ORDERED.

8 Dated: March 29, 2018

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Petitioner,

v.

EDMUND G. BROWN, Jr., and  
THE STATE JUSTICE INSTITUTE  
ACT OF 1984

Respondents.

No. 1:18-cv-00181-SKO HC

**FINDINGS AND RECOMMENDATIONS  
FOR DISMISSAL OF PETITIONER AS  
SECOND OR SUCCESSIVE**

**COURT CLERK TO ASSIGN DISTRICT  
JUDGE**

**(Doc. 1)**

**Screening Order**

Petitioner, Zane Hubbard, is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition alleges two claims: (1) “treason and levy by Govern[o]r Edmund G. Brown, Junior;” and (2) “Governor Jerry Brown has subjected Mexican American Indian(s) to low intensity warfare under the “State Justice Institute Act of 1984.” Because Petitioner has filed two previous habeas petitions concerning the same conviction, the Court will recommend dismissing the petition as second or successive.

**I. Procedural and Factual Background**

A jury convicted Petitioner of kidnapping to commit robbery, carjacking for the purpose of kidnapping, assault with a semiautomatic firearm, criminal threats, active participation in a criminal street gang, and being a felon in possession of a firearm. *People v. Ramirez*, F062512,

1 2013 WL 943873 (Cal. Ct. App. March 12, 2013). The Kern County Superior Court sentenced  
2 Petitioner to an indeterminate term of 15 years to life in prison and a determinate term of 24 years  
3 4 months. *Id.* Following a direct appeal, Petitioner unsuccessfully sought habeas relief in  
4 California state courts.

5 On October 23, 2013, Petitioner filed a petition for federal habeas relief pursuant to 28  
6 U.S.C §2254. *Hubbard v. Seng*, No. CV 13-2099-RJT, 2014 WL 1761013 (E.D. Cal. April 30,  
7 2014). The Court dismissed the petition because Petitioner's claims were barred by judicial  
8 immunity. Petitioner filed a second § 2254 petition on the same day. *Hubbard v. Gipson*, No.  
9 1:13-cv-01758-LJO-JLT, 2016 WL 5341283 (E.D. Cal. Sept. 22, 2016). The Court denied all of  
10 Petitioner's claims. Petitioner filed the above-captioned petition on February 5, 2018.

11 **II. Preliminary Screening**

12 Rule 4 of the Rules Governing § 2254 cases requires the Court to conduct a preliminary  
13 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
14 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the  
15 Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).  
16 A petition for habeas corpus should not be dismissed without leave to amend unless it appears  
17 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,  
18 440 F.2d 13, 14 (9th Cir. 1971).

19 **III. No District Court Jurisdiction Over a Second or Successive Petition**

20 The circuit court of appeals, not the district court, must decide whether a second or  
21 successive petition satisfies the statutory requirements to proceed. 28 U.S.C. § 2244(b)(3)(A)  
22 ("Before a second or successive petition permitted by this section is filed in the district court, the  
23 applicant shall move in the appropriate court of appeals for an order authorizing the district court  
24 to consider the application"). This means that a petitioner may not file a second or successive  
25 petition in district court until the petitioner has obtained leave from the court of appeals. *Felker v.*  
26 *Turpin*, 518 U.S. 651, 656-57 (1996). In the absence of an order from the appropriate circuit  
27 court, a district court lacks jurisdiction over a petition and must dismiss the second or successive  
28

petition. *Greenawalt v. Stewart*, 105 F.3d 1268, 1277 (9th Cir. 1997).

Petitioner has not secured leave from the Ninth Circuit Court of Appeals to file the above-captioned petition. Accordingly, the Court must dismiss the petition for lack of jurisdiction.

### III. Certificate of Appealability

A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issues or issues satisfy the showing required by paragraph (2).

If a court denies a habeas petition, the court may only issue a certificate of appealability "if jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

1 Although the petitioner is not required to prove the merits of his case, he must demonstrate  
2 "something more than the absence of frivolity or the existence of mere good faith on his . . .  
3 part." *Miller-El*, 537 U.S. at 338.

4 Reasonable jurists would not find the Court's determination that the petition is a second or  
5 successive petition to be debatable or wrong, or conclude that the issues presented required  
6 further adjudication. Accordingly, the Court recommends declining to issue a certificate of  
7 appealability.  
8

9 **IV. Recommendation and Order**

10 Based on the foregoing, the undersigned hereby recommends that the Court dismiss the  
11 petition in this action as second or successive and decline to issue a certificate of appealability.  
12

13 These Findings and Recommendations will be submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**  
15 **(30) days** after being served with these Findings and Recommendations, either party may file  
16 written objections with the Court. The document should be captioned "Objections to Magistrate  
17 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and  
18 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure  
19 to file objections within the specified time may constitute waiver of the right to appeal the District  
20 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*  
21 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
22

23 The Court Clerk is hereby directed to assign a district judge to this action.  
24

25 IT IS SO ORDERED.

26 Dated: **February 16, 2018**

27 /s/ Sheila K. Olerto  
28 UNITED STATES MAGISTRATE JUDGE

(11 ATTACHMENTS) (P) 11)  
**JUDICIAL COUNCIL**

**OF THE NINTH CIRCUIT**

**FILED**

SEP 28 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 18-90055 and 18-90056

**ORDER**

Before: **CANBY, BYBEE, M. SMITH, CHRISTEN and MURGUIA**,  
Circuit Judges, **MOSKOWITZ, PHILLIPS and SEABRIGHT**,  
Chief District Judges, and **AIKEN and MOLLWAY**, District Judges

On July 20, 2018, complainant was ordered to show cause why he should not be sanctioned for his abuse of the misconduct complaint procedure.

Complainant's response to the Order to Show Cause was inadequate.

Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, we conclude that complainant's right to file further misconduct complaints should be restricted. We direct the Clerk to enter the following pre-filing review order:

**Pre-Filing Review Order**

(1) This pre-filing review order shall apply to all misconduct complaints or petitions for review filed by complainant.

(2) Any future misconduct complaint or petition for review filed by complainant shall comply with the requirements of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and shall contain the sentence "THIS



COMPLAINT/PETITION IS FILED SUBJECT TO PRE-FILING REVIEW

ORDER No. 18-90055” in capital letters in the caption of the complaint or petition.

(3) If complainant submits a misconduct complaint or petition for review in compliance with this order, the Clerk shall lodge the complaint or petition and accompanying documents. The Clerk shall not file the complaint or petition until complainant’s submission is reviewed and a determination is made as to whether it merits further review and should be filed.

(4) This pre-filing review order shall remain in effect until further order of the Judicial Council.

Complainant’s failure to comply with this order shall result in any new misconduct complaints or petitions for review being dismissed or not being filed and other sanctions being levied as the Judicial Council may deem appropriate.