

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Serpa v. Unknown

No. 2:25-cv-0788-JDP (P) (E.D. Cal. May 30, 2025) · No. 2:25-cv-0788-JDP (P) · Decided May 30, 2025

SUMMARY

The court granted petitioner leave to amend his habeas petition because the allegations concerning an alleged sexual assault by a correctional officer appeared to challenge prison conditions rather than the validity of his conviction. The court directed petitioner to submit either an amended habeas petition or a completed 42 U.S.C. § 1983 complaint within 30 days and reserved ruling on his motion to proceed in forma pauperis.

OPINION

(HC) Serpa v. Unknown

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JESSE A. SERPA, Case No. 2:25-cv-0788-JDP (P) 12 Petitioner, 13 v. ORDER

14 UNKNOWN,

15 Respondent. 16

17 Petitioner, a state prisoner proceeding pro se, brings this action under 28 U.S.C. § 2254. 18
ECF No. 1. He also moves to proceed in forma pauperis. ECF No. 6. I will give petitioner leave
19 to amend his petition because it appears that the claims raised therein do not attack the validity
of 20 his conviction and, instead, should be brought under 42 U.S.C. § 1983. Petitioner should
indicate 21 what type of case he wants to bring should he choose to amend his petition. I will also
reserve 22 ruling on his motion to proceed in forma pauperis until petitioner determines what sort
of action 23 he intends to proceed on. 24 The petition is before me for preliminary review under
Rule 4 of the Rules Governing

25 Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine
26 the habeas petition and order a response to the petition unless it “plainly appears” that the 27
28 1 | petitioner is not entitled to relief. See Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir.
2019); 2 | Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1998). 3 Petitioner filed this action on
a habeas form, but his allegations concern sexual assault that 4 | he purportedly endured at the
hands of an unknown correctional officer at Corcoran State Prison. 5 | ECF No. 1 at 3. As such, I
cannot tell what petitioner’s intention is. If he wishes to attack the 6 | sufficiency of his conviction,

then he must describe why that conviction is insufficient. By 7 | contrast, if petitioner wishes to bring a § 1983 claim for a violation of his constitutional rights, he 8 | must specifically identify what rights were violated and file his complaint on a § 1983 form. As 9 | such, I will give petitioner leave to amend to confirm what type of case he wishes to pursue. 10 Accordingly, it is hereby ORDERED that: 11 1. The Clerk of Court shall send petitioner a habeas form and a § 1983 form with this 12 | order. 13 2. Within thirty (30) days from the entry of this order, petitioner must return either an 14 | amended habeas form or a completed § 1983 form, depending on the type of action he wishes to 15 || pursue. 16 7 IT IS SO ORDERED. Dated: _ May 30, 2025 a————

19 JEREMY D. PETERSON

UNITED STATES MAGISTRATE JUDGE

21 22 23 24 25 26 27 28