

**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

OPINION

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

