

1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
2 FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL
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RECORD IN THIS ACTION ON THIS DATE.

3 DATED: 10-20-08
J. Gule
4 DEPUTY CLERK

FILED

OCT 20 2008

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY JG DEPUTY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

12 JESSE DELGADO,) Case No. CV 08-6832-DSF (MLG)
13)
13 Petitioner,)
14)
14 v.) MEMORANDUM OPINION AND ORDER
15) DISMISSING PETITION FOR WRIT OF
15 T. FELKER,) HABEAS CORPUS WITH LEAVE TO
16) AMEND; ORDER TO SHOW CAUSE
16 Respondent.)
17)

18 Petitioner, a California state prisoner, filed this petition for
19 writ of habeas corpus on October 17, 2008. The form raises two claims
20 for relief which are printed in such tiny handwriting that they are
21 illegible. The same defect exists as to the recitation of claims
22 Petitioner raised in petitions for writ of habeas corpus in the state
23 courts. (Petition, 4.) The petition itself is defective in that it
24 intersperses claims for relief with portions of the transcript in a
25 manner that renders the petition impossible to understand. Based on
26 the above-noted deficiencies, the petition is DISMISSED with leave
27 to amend.

28 //

1 Petitioner may file a "First Amended Petition" not later than
2 30 days from the date of this order. To that end, the Clerk is
3 instructed to send to petitioner with this order a copy of the latest
4 version of form Civ 69 - Petition for Writ of Habeas Corpus by a
5 Person in State Custody, pen-changed to reflect "First Amended"
6 Petition. All statements made in the petition must be written or
7 typed in script large enough for the reader to see. The memorandum
8 supporting the petition must be separate from any exhibits and
9 transcript pages, so that the court may understand the claims being
10 raised. **Petitioner is advised that if he fails to file a First**
11 **Amended Petition in accordance with the requirements of this order,**
12 **the action will be subject to dismissal without further notice.**


13 In addition, the petition indicates that a state habeas corpus
14 petition was filed in the California Supreme Court on September 4,
15 2008 and is currently pending. A federal court will not grant a state
16 prisoner's petition for writ of habeas corpus unless it appears that
17 the prisoner has fully exhausted available state remedies. 28 U.S.C.
18 §§ 2254(b) and (c); *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir.
19 1979); *see also Rose v. Lundy*, 455 U.S. 509, 522 (1982). Exhaustion
20 requires that the petitioner's contentions be fairly presented to the
21 highest court of the state. *Carothers*, 594 F.2d at 228; *Allbee v.*
22 *Cupp*, 716 F.2d 635, 636-637 (9th Cir. 1983). "For reasons of
23 federalism, 28 U.S.C. § 2254 requires federal courts to give the
24 states an initial opportunity to correct alleged violations of its
25 prisoners' federal rights." *Kellotat v. Cupp*, 719 F.2d 1027, 1029
26 (9th Cir. 1983). The five claims raised in this petition have been
27 presented to the California Supreme Court and are exhausted.
28 However, because Petitioner seeks to raise other claims in the

1 petition which are still pending in the state courts, the petition
2 is unexhausted.

3 Where an appeal of a state conviction is pending, a would-be
4 habeas petitioner must await its outcome before his state remedies
5 are exhausted. *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983);
6 See also *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th
7 Cir. 1994). This is because a pending state court challenge may
8 result in the reversal of the state convictions, thereby mooting the
9 petition. *Sherwood*, 716 F.2d at 634.

10 Because petitioner still has proceedings pending in the
11 California courts, apparently relating to issues which he intends on
12 presenting to this court in this petition, he has not yet exhausted
13 his available state remedies. Petitioner must show cause in writing,
14 within 30 days of this date, why this petition should not be
15 dismissed without prejudice.

16 Dated: October 20, 2008

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19 _____
20 Marc L. Goldman
21 United States Magistrate Judge
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