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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALLEN WASHINGTON,	)	CASE NO. CV 10-3917-SVW (PJW)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE WHY PETITION
	)	SHOULD NOT BE DISMISSED
v.	)	
	)	
BOARD OF PRISON TERM, et al.,	)	
	)	
Respondent.	)	
	)	

16           On May 25, 2010, Petitioner filed a Petition for Writ of Habeas  
17 Corpus, seeking release from the California Department of Corrections.  
18 (Petition at 1.) According to Petitioner, he was arrested on April  
19 20, 2010, for absconding from parole. (Petition at 3.) He claims  
20 that he is being held unlawfully because the "maximum discharge date"  
21 for his parole period relating to the underlying felony, corporal  
22 injury to a spouse, which he pled guilty to in 2002, has been  
23 exceeded. (Petition at 2-4.)

24           As a matter of comity between state and federal courts, a federal  
25 court generally will not address the merits of a habeas corpus  
26 petition unless the petitioner has first exhausted his state remedies,  
27 i.e., sought state court review of every ground presented in the  
28 petition by presenting it to the highest state court. *Rose v. Lundy*,

1 455 U.S. 509, 518-22 (1982). Indeed, the law governing habeas  
2 petitions provides that a habeas petition brought by a person in state  
3 custody *cannot be granted* "unless it appears that--(A) the applicant  
4 has exhausted the remedies available in the courts of the State; or  
5 (B)(i) there is an absence of available State corrective process; or  
6 (ii) circumstances exist that render such process ineffective to  
7 protect the rights of the applicant." 28 U.S.C. § 2254(b)(1). To  
8 exhaust state remedies, a petitioner must fairly present his  
9 contentions to the state courts, and the highest court of the state  
10 must dispose of them on the merits. *O'Sullivan v. Boerckel*, 526 U.S.  
11 838, 842, 844-45 (1999). A district court may raise a failure to  
12 exhaust *sua sponte*. *Stone v. San Francisco*, 968 F.2d 850, 856 (9th  
13 Cir. 1992.)

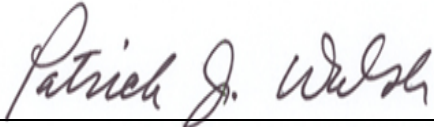
14 In his Petition, Petitioner does not allege that he has presented  
15 his claim for relief to the California Supreme Court. Further, a  
16 check of the California Appellate Courts' website shows that  
17 Petitioner has not filed anything in the California Supreme Court  
18 since 1991. Thus, it appears that the Petition is completely  
19 unexhausted and is subject to dismissal on that basis. See *Rasberry*  
20 *v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). Petitioner must first  
21 present his claims to the state supreme court, either through direct  
22 appeal or in a petition for habeas corpus, and have that court decide  
23 them on their merits before he can proceed in this Court.

24 IT IS THEREFORE ORDERED that, no later than August 23, 2013,  
25 Petitioner shall inform the Court in writing why this case should not  
26 be dismissed for failure to exhaust. Failure to timely file a  
27 response will result in a recommendation that this case be dismissed.  
28 The Court will also dismiss the action if Petitioner's mail is

1 returned due to the fact that he is no longer at the address he has  
2 provided for correspondence with the Court.

3 It is so ordered.

4 DATED: August 1, 2013.

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7 PATRICK J. WALSH  
8 UNITED STATES MAGISTRATE JUDGE  
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