



1 in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii)  
2 circumstances exist that render such process ineffective to protect the rights of the applicant.” 28  
3 U.S.C. § 2254(b)(1). Moreover, if the exhaustion requirement is to be waived, it must be waived  
4 expressly by the state, through counsel. See 28 U.S.C. § 2254(b)(3).

5 Exhaustion requires that petitioner’s contentions be fairly presented to the state supreme  
6 court even if that court’s review is discretionary. O’Sullivan v. Boerckel, 526 U.S. 838, 845-47, 119  
7 S.Ct. 1728, 144 L.Ed.2d 1 (1999); James v. Giles, 221 F.3d 1074, 1077, n.3 (9th Cir. 2000).  
8 Petitioner must give the state courts “one full opportunity to resolve any constitutional issues by  
9 invoking one complete round of the State’s established appellate review process” in order to  
10 exhaust his claims. O’Sullivan, 526 U.S. at 845. A claim has not been fairly presented unless the  
11 prisoner has described in the state court proceedings both the operative facts and the federal legal  
12 theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66, 115 S.Ct. 887,  
13 130 L.Ed.2d 865 (1995); Picard v. Connor, 404 U.S. 270, 275-78, 92 S.Ct. 509, 30 L.Ed.2d 438  
14 (1971); Johnson v. Zenon, 88 F.3d 828, 830 (9th Cir. 1996); Bland v. California Dep’t of  
15 Corrections, 20 F.3d 1469, 1473 (9th Cir. 1994), overruled on other grounds by Schell v. Witek,  
16 218 F.3d 1017 (9th Cir. 2000). Petitioner has the burden of demonstrating that he has exhausted  
17 available state remedies. See, e.g., Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982).

18 Here, it appears from the Petition that petitioner has not exhausted his state judicial  
19 remedies. Petitioner filed a state habeas petition with the Santa Barbara County Superior Court  
20 on May 31, 2013, which was denied on February 18, 2014. (Petition, Ex. B, at 1). Petitioner filed  
21 a habeas petition with the California Court of Appeal on March 26, 2014, which was denied on  
22 June 30, 2014. (Petition, Ex. C, at 1, 6<sup>1</sup>). However, there is no indication that petitioner has filed  
23 a habeas petition with the California Supreme Court.<sup>2</sup>

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25 <sup>1</sup> The Court has consecutively paginated Exhibit C, which was paginated separately but  
26 submitted as one document.

27 <sup>2</sup> The caption of the instant Petition refers to the California Supreme Court, but the Petition  
28 was sent to and filed in this Court (the U.S. District Court). There is no indication if petitioner has  
filed in the California Supreme Court, or that the California Supreme Court has rendered a  
(continued...)

1 Accordingly, for the foregoing reasons, **no later than October 21, 2014**, petitioner is  
2 ordered to show cause why the Petition should not be dismissed without prejudice for failure to  
3 exhaust state remedies. Filing by petitioner of an Amended Petition -- on the Central District of  
4 California's form Petition for Writ of Habeas Corpus -- clearly showing that petitioner has  
5 exhausted his state judicial remedies, as well as filing a complete copy of the state habeas corpus  
6 petition that was denied by the California Supreme Court, shall be deemed compliance with this  
7 Order to Show Cause. **Petitioner is advised that his failure to show in his Amended Petition**  
8 **that he has exhausted his state judicial remedies, including by providing the Court with a**  
9 **copy of his California Supreme Court habeas petition, will result in the action being**  
10 **dismissed for lack of exhaustion. Petitioner is further advised that his failure to timely**  
11 **respond to this Order will result in the action being dismissed for failure to prosecute and**  
12 **failure to follow Court orders.**

13 The Court Clerk is directed to send petitioner a copy of his current Petition, together with  
14 blank copies of the forms required when filing a Petition for Writ of Habeas Corpus by a Person  
15 in State Custody. Any Amended Petition or other filing with the Court shall use the case number  
16 assigned to this action.

17  
18 DATED: September 29, 2014



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20 PAUL L. ABRAMS  
21 UNITED STATES MAGISTRATE JUDGE  
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25  
26

27 \_\_\_\_\_  
28 <sup>2</sup>(...continued)  
decision.