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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
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11 JOSEPH BLAIN, ) Case No. SACV 08-1375-RGK(RC)  
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13 ) Petitioner, ) OPINION AND ORDER ON  
14 ) vs. ) PETITION FOR WRIT OF HABEAS CORPUS  
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16 ) J. HARTLEY, WARDEN A.S.P. )  
17 ) STATE OF CALIFORNIA, )  
18 ) Respondent. )  
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18 On December 3, 2008, petitioner Joseph Blain, a person in state  
19 custody proceeding pro se, filed a habeas corpus petition under 28  
20 U.S.C. § 2254 challenging his convictions and sentence in Orange  
21 County Superior Court case no. 05CF1616 on seven counts of violating  
22 California Penal Code § 288, as well as a motion for protective  
23 petition and stay of proceedings.<sup>1</sup> The petitioner challenges his  
24 sentence on the sole ground of "ineffective assistance of counsel,"  
25 and states the facts supporting this ground as "failure to investigate  
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27 <sup>1</sup> The Court takes judicial notice under Fed. R. Evid. 201  
28 that the California Supreme Court on November 12, 2008, denied  
petitioner's request for habeas corpus relief, making his motion  
for a stay moot.

1 for penalty phase" -- without any further explanation of the facts  
2 and without citation to any supporting cases to illuminate the facts.  
3 Thus, on December 15, 2008, this Court dismissed the petition with  
4 leave to amend pursuant to Fed. R. Civ. P. 12(e) and Rule 2 of the  
5 Rules Governing Section 2254 Cases in the United States District  
6 Courts, see James v. Borg, 24 F.3d 20, 26 (9th Cir.) ("Conclusory  
7 allegations which are not supported by a statement of specific facts  
8 do not warrant habeas relief."), cert. denied, 513 U.S. 935 (1994);  
9 Jones v. Gomez, 66 F.3d 199, 204-05 & n.1 (9th Cir. 1995), cert.  
10 denied, 517 U.S. 1143 (1996), and afforded petitioner 30 days in which  
11 to file an amended petition. However, petitioner has not filed an  
12 amended petition.<sup>2</sup>

#### 13 14 **DISCUSSION**

15 Rule 1 of the Rules Governing Section 2254 Cases in the United  
16 States District Courts ("Rules") provides that these Rules govern the  
17 procedures in the federal courts on an application under 28 U.S.C. §  
18 2254 by a person in custody pursuant to a judgment of a state court.  
19 28 U.S.C. § 2254, Rule 1. Rule 2(c) requires that the petition  
20 shall specify all grounds for relief, as well as the facts supporting  
21 each ground. Id. Here, the petitioner has failed to set forth the  
22 facts supporting his claim. Rather than immediately summarily  
23 dismissing the habeas petition based on its deficiency, the Court  
24 instead dismissed it with leave to amend, and ordered petitioner to

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27 <sup>2</sup> Rather, petitioner filed another motion for a stay of  
28 proceedings. Without a cognizable petition, however, there is no  
proceeding to stay; thus, petitioner's most recent request for a  
stay is denied.

1 file an amended petition within thirty (30) days. The Court  
2 admonished petitioner, however, that "[f]ailure to timely file the  
3 amended petition may result in the recommendation that this action be  
4 dismissed." Although more than thirty days have passed, petitioner  
5 has not filed an amended petition.


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7 Rule 4 provides that "[i]f it plainly appears from the petition  
8 and any attached exhibits that the petitioner is not entitled to  
9 relief in the district court, the judge must dismiss the petition and  
10 direct the clerk to notify the petitioner." 28 foll. U.S.C. § 2254,  
11 Rule 4. Since the habeas petition is clearly defective on its face,  
12 it should be summarily dismissed without prejudice.

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14 **ORDER**

15 IT IS ORDERED that the habeas petition shall be SUMMARILY  
16 DISMISSED without prejudice.

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18 IT IS FURTHER ORDERED that the Clerk shall notify petitioner of  
19 the dismissal.

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21 DATE: January 12, 2009

  
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R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

22  
23 PRESENTED BY:

24 DATE: January 8, 2009

25  
26 /S/ Rosalyn M. Chapman  
ROSALYN M. CHAPMAN  
UNITED STATES MAGISTRATE JUDGE