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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SALVADOR CARRILLO LEON,)	1:13-cv-00922 GSA HC
)	
Petitioner,)	ORDER DISMISSING PETITION FOR WRIT OF
)	HABEAS CORPUS AND GRANTING
v.)	PETITIONER LEAVE TO FILE AMENDED
)	PETITION
)	
L. S. McEWEN, Warden,)	ORDER DIRECTING CLERK OF COURT TO
)	MAIL PETITIONER A BLANK HABEAS FORM
Respondent.)	
)	[THIRTY DAY DEADLINE]
)	

On May 24, 2013, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Central District of California. Because the petition challenges Petitioner’s 2010 conviction sustained in Tulare County Superior Court, the case was transferred to the Eastern District and received in this Court. Petitioner has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing

1 Section 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). The Advisory
2 Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus,
3 either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an
4 answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001). A petition
5 for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable
6 claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir.
7 1971).

8 In this case, Petitioner challenges his 2010 conviction in Tulare County Superior Court for
9 second degree murder, gross vehicular manslaughter while intoxicated, and driving under the
10 influence causing great bodily injury. A review of the petition reveals that Petitioner has failed to state
11 any claims for relief. Accordingly, the petition will be dismissed. Petitioner will be granted the
12 opportunity to file a first amended petition to set forth his claims for relief. Petitioner is advised that
13 he must reference the instant case number and designate his petition as a "First Amended Petition."
14 Petitioner is forewarned that failure to comply with this order will result in dismissal of the action.

15 **ORDER**

16 Accordingly, IT IS HEREBY ORDERED:

- 17 1) The petition for writ of habeas corpus is DISMISSED with leave to amend;
18 2) Petitioner is GRANTED thirty (30) days from the date of service of this order to file a first
19 amended petition; and
20 3) The Clerk of Court is DIRECTED to send Petitioner blank forms for filing a habeas action.

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24 IT IS SO ORDERED.

25 Dated: July 16, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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