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**UNITED STATES DISTRICT COURT**

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EASTERN DISTRICT OF CALIFORNIA

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LONNIE D. DELANEY,

Case No. 1:15-cv-01289-BAM HC

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Petitioner,

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v.

ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS  
WITH LEAVE TO AMEND

12

ELVIN VALENZUELA, Warden of CMC,

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Respondent.

(Doc. 1)

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**SCREENING ORDER**

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Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

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**I. Preliminary Screening**

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Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct 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 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990). A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

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1           **II. Signature Under Penalty of Perjury**

2           A petition for writ of habeas corpus must "be signed under penalty of perjury by the  
3 petitioner or by a person authorized to sign if for the petition under 28 U.S.C. § 2242." Rule 2(c)(5)  
4 of the Rules Governing 2254 Cases. Although Petitioner signed his declaration in support of his  
5 request to proceed *in form pauperis*, Petitioner failed to sign the petition to sign the petition itself.  
6 As a result, the Court must dismiss the petition.

7           **III. Conclusion and Order**

8           Accordingly, the Court hereby DISMISSES this action for failure to sign the petition under  
9 penalty of perjury. The Court hereby ORDERS:

- 11           1. The petition for writ of habeas corpus shall be dismissed with leave to amend.
- 12           2. The Clerk's Office shall send Petitioner a copy of this order and a form for a Petition  
13           under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.
- 14           3. Within thirty (30) days of service of this order, Petitioner may file an amended  
15           petition signed under penalty of perjury.
- 16           4. If Plaintiff fails to file an amended petition within thirty (30) days from the date  
17           of service of this order, this action will be dismissed without further notice for lack of  
18           jurisdiction.

21           IT IS SO ORDERED.

22           Dated: August 26, 2015

23           \_\_\_\_\_  
24           /s/ Barbara A. McAuliffe  
25           UNITED STATES MAGISTRATE JUDGE