

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CASIMIRO ESPARZA,  
  
  Petitioner,  
  
  v.  
  
STU SHERMAN, Warden,  
  
  Respondent.

No. 1:17-cv-00651-DAD-SKO HC  
  
**ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS  
WITH LEAVE TO AMEND**  
  
**(Doc. 1)**

**Screening Memorandum**

Petitioner Casimiro Esparza is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court has reviewed the habeas petition (Doc. 1) and determined that the petition cannot proceed as filed. Accordingly, the Court will dismiss the petition with leave to amend to permit Petitioner to correct the noted deficiencies.

**I. Preliminary Screening**

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).

1 A petition for habeas corpus should not be dismissed without leave to amend unless it appears  
2 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,  
3 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

4 **II. The Petition Fails to State a Claim**

5 **A. The Petition Is Incomplete and Ambiguous**

6 Using a form petition, Petitioner indicates that he is alleging two grounds for relief. In  
7 grounds one and two of the form, Petitioner refers the Court to pages 51 through 68 of the petition  
8 for both the grounds and the supporting facts. Petitioner indicates that ground three is “NA,”  
9 presumably not applicable, and leaves ground four of the form blank.

10 The pages to which Petitioner refers are a portion of the opinion on direct appeal of the  
11 California Court of Appeal for the Fifth Appellate District. The pages include the statement of  
12 facts and the state court’s analysis of six claims. The Court is unable to determine which two  
13 claims Petitioner intends to allege as grounds for relief in his federal habeas action.

14 In addition to identifying his federal claims, Petitioner must provide the Court with a brief  
15 statement of facts and a brief explanation to inform the Court of his basis for seeking relief on the  
16 two identified claims. Because the state court opinion sets forth the state court’s reasoning in  
17 denying Petitioner’s claims, Petitioner needs to explain why he seeks relief from the state court’s  
18 ruling. Simply put, Petitioner needs to tell the Court why he thinks that the state court’s decision  
19 was wrong. As he prepares the amended petition, Petitioner may wish to keep in mind the federal  
20 standard of habeas review.

21 **B. Standard of Review**

22 A federal petition for writ of habeas corpus is neither a substitute for a direct appeal nor a  
23 device for federal review of the merits of a guilty verdict rendered in state court. *Jackson v.*  
24 *Virginia*, 443 U.S. 307, 332 n. 5 (1979) (Stevens, J., concurring). Habeas corpus relief is  
25  
26  
27  
28

1 intended to address only "extreme malfunctions" in state criminal justice proceedings. *Id.* Under  
2 the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a petitioner can prevail  
3 only if he can show that the state court's adjudication of his claim, on the merits:

4 (1) resulted in a decision that was contrary to, or involved an unreasonable  
5 application of, clearly established Federal law, as determined by the Supreme Court of  
6 the United States; or

7 (2) resulted in a decision that was based on an unreasonable determination of the  
8 facts in light of the evidence presented in the State court proceeding.

9 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams*,  
10 529 U.S. at 413.

11 "By its terms, § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state court,  
12 subject only to the exceptions set forth in §§ 2254(d)(1) and (d)(2)." *Harrington v. Richter*, 562  
13 U.S. 86, 98 (2011).

14 As a threshold matter, a federal court must first determine what constitutes "clearly  
15 established Federal law, as determined by the Supreme Court of the United States." *Lockyer*,  
16 538 U.S. at 71. To do so, the Court must look to the holdings, as opposed to the dicta, of the  
17 Supreme Court's decisions at the time of the relevant state-court decision. *Id.* The court must  
18 then consider whether the state court's decision was "contrary to, or involved an unreasonable  
19 application of, clearly established Federal law." *Id.* at 72. The state court need not have cited  
20 clearly established Supreme Court precedent; it is sufficient that neither the reasoning nor the  
21 result of the state court contradicts it. *Early v. Packer*, 537 U.S. 3, 8 (2002). The federal court  
22 must apply the presumption that state courts know and follow the law. *Woodford v. Visciotti*,  
23 537 U.S. 19, 24 (2002). The petitioner has the burden of establishing that the decision of the  
24 state court is contrary to, or involved an unreasonable application of, United States Supreme  
25 Court precedent. *Baylor v. Estelle*, 94 F.3d 1321, 1325 (9<sup>th</sup> Cir. 1996).

26 ///  
27

1 "A federal habeas court may not issue the writ simply because the court concludes in its  
2 independent judgment that the relevant state-court decision applied clearly established federal  
3 law erroneously or incorrectly." *Lockyer*, 538 U.S. at 75-76. "A state court's determination that  
4 a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree'  
5 on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101 (quoting  
6 *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Thus, the AEDPA standard for habeas  
7 relief is difficult to satisfy since even a strong case for relief does not demonstrate that the state  
8 court's determination was unreasonable. *Harrington*, 562 U.S. at 102.

10 **III. Conclusion and Order**

11 The Court hereby ORDERS:

- 12 1. The petition for writ of habeas corpus is hereby  
13 DISMISSED with leave to amend.
- 14 2. The Clerk of Court shall send Petitioner a copy of this order  
15 and a form for a Petition under 28 U.S.C. § 2254 for Writ of Habeas  
16 Corpus by a Person in State Custody.
- 17 3. Within 30 days of this order, Petitioner shall file an  
18 amended petition correcting the deficiencies noted in this order.  
19 Petitioner shall sign the petition under penalty of perjury where  
20 indicated. The amended petition must be complete in itself. This  
21 means that the amended petition may not refer back to any portion  
22 of the original petition filed in this case but must include all  
23 pleadings and any appendices which Petitioner intends to  
24 incorporate within the amended petition.
- 25 4. If Petitioner fails to file an amended petition within thirty  
26 (30) days from the date of this order, the Court will recommend that  
27 case be dismissed for lack of prosecution.

28 IT IS SO ORDERED.

Dated: May 24, 2017

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE