



1 dismissed because petitioner has failed to exhaust available state remedies with respect to the  
2 claims presented in his petition.<sup>2</sup>

3 A district court may not grant a petition for a writ of habeas corpus unless “the applicant  
4 has exhausted the remedies available in the courts of the State,” or unless there is no State  
5 corrective process or “circumstances exist that render such process ineffective to protect the rights  
6 of the applicant.” 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by  
7 presenting the “substance of his federal habeas corpus claim” to the state courts. *Picard v.*  
8 *Connor*, 404 U.S. 270, 278 (1971); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). For a  
9 California prisoner to exhaust, he must present his claims to the California Supreme Court on  
10 appeal in a petition for review or on post-conviction in a petition for a writ of habeas corpus. *See*  
11 *Carey v. Saffold*, 536 U.S. 223, 239-40 (2002) (describing California’s habeas corpus procedure);  
12 *Gatlin v. Madding*, 189 F.3d 882, 888 (9th Cir. 1999) (to exhaust, prisoner must present claims on  
13 appeal to California Supreme Court in a petition for review). Unless the respondent specifically  
14 consents to the court entertaining unexhausted claims, a petition containing such claims must be  
15 dismissed. *See* 28 U.S.C. § 2254(b)(3); *Picard*, 404 U.S. at 275.

16 Here, petitioner states that he did not directly appeal the order of extradition but did file  
17 petitions for writs of habeas corpus in the state superior court and court of appeals. ECF No. 6 at  
18 3. He concedes that he did not challenge the extradition proceedings in the state supreme court,  
19 due to his mistaken belief that “the Court of Appeals . . . is the highest court required.” *Id.* at 6.  
20 As set forth above, however, petitioner must first present his claims to the California Supreme  
21 Court before proceeding to federal court. *See Greene v. Lambert*, 288 F.3d 1081, 1086 (9th Cir.  
22 2002). Because petitioner has not done so, and because he does not claim to have obtained from  
23 the respondent an express waiver of the exhaustion requirement, this action must be summarily  
24 dismissed.

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27 <sup>2</sup> The court may raise the failure to exhaust issue *sua sponte* and may summarily dismiss  
28 on that ground. *See Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992).

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Accordingly, it is ORDERED that:

1. Petitioner’s application for a writ of habeas corpus is dismissed without prejudice for failure to exhaust state remedies.
2. The Clerk of the Court is directed to serve a copy of this order, together with a copy of the February 11, 2015 petition, on Michael Patrick Farrell, Senior Assistant Attorney General for the State of California.
3. The Clerk of the Court is directed to terminate all outstanding motions and close the case.
4. The court declines to issue a certificate of appealability.

DATED: March 11, 2015.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE