



1 application petitioner raises a single claim for relief based on California Senate Bill No. 261  
2 which provides a youthful offender parole hearing for inmates who committed their crimes when  
3 they were under 23 years of age. Petitioner complains about the Board of Parole Hearings' delay  
4 in scheduling him for a youthful offender parole hearing which will not take place until after his  
5 earliest possible release date.

## 6 **II. Screening Standards**

7 Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for  
8 summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and  
9 any attached exhibits that the petitioner is not entitled to relief in the district court....” See also  
10 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (“[R]ule 4 ... ‘explicitly allows a district  
11 court to dismiss summarily the petition on the merits when no claim for relief is stated’”), quoting  
12 Gutierrez v. Griggs, 695 F.2d 1195, 1198 (9th Cir. 1983). A petition for habeas corpus should  
13 not be dismissed without leave to amend unless it appears that no tenable claim for relief can be  
14 pleaded were such leave to be granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

## 15 **III. Discussion**

16 In the instant case, it is plain from the petition and the attached exhibits that petitioner is not  
17 entitled to federal habeas relief. Petitioner’s claim is not cognizable in federal habeas corpus  
18 proceedings because it only raises a question of state law concerning the Board of Parole  
19 Hearings’ implementation of Senate Bill 261. See 28 U.S.C. § 2254(a) (stating that habeas  
20 corpus relief is available only on the ground that petitioner “is in custody in violation of the  
21 Constitution or laws or treaties of the United States.”); Lewis v. Jeffers, 497 U.S. 764, 783  
22 (1990). Therefore, the petition should be summarily dismissed. Additionally, there is no tenable  
23 federal claim for relief that can be pleaded in an amended federal habeas petition so leave to  
24 amend will not be granted.

## 25 **IV. Certificate of Appealability**

26 There is no right of appeal from a district court's final order in a habeas corpus proceeding  
27 without first obtaining a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P.  
28 22(b). Where, as here, the petition was dismissed on procedural grounds, a certificate of

1 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it  
2 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of  
3 reason would find it debatable whether the petition states a valid claim of the denial of a  
4 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.  
5 McDaniel, 529 U.S. 473, 484 (2000)). Since the petition fails to facially allege the denial of a  
6 constitutional right and jurists of reason would not find the district court’s procedural ruling  
7 debatable, a certificate of appealability is not warranted. See Morris v. Woodford, 229 F.3d 775,  
8 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner’s motion to proceed in forma pauperis, ECF No. 5, is granted;
- 11 2. Petitioner’s application for a writ of habeas corpus is summarily dismissed;
- 12 3. The court declines to issue a certificate of appealability; and
- 13 4. The Clerk of Court is directed to enter judgment and close this case.

14 Dated: September 27, 2017



15 CAROLYN K. DELANEY  
16 UNITED STATES MAGISTRATE JUDGE

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