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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EARL BOWDEN,

No. C 08-1201 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE**

v.

BEN CURRY, Warden,

Respondent.

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This is a habeas case challenging denial of parole filed by a prisoner currently incarcerated at the Correctional Training Facility in Soledad. The case was transferred he from the United States District Court for the Central District of California. Petitioner has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. § 2241(d) (venue proper in both district of conviction and district of confinement).

**DISCUSSION**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading

1 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ  
2 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
3 court must “specify all the grounds for relief which are available to the petitioner ... and shall  
4 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of  
5 the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not  
6 sufficient, for the petition is expected to state facts that point to a ‘real possibility of  
7 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
8 688, 689 (1st Cir. 1970). “Habeas petitions which appear on their face to be legally insufficient  
9 are subject to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d  
10 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

11 **B. LEGAL CLAIMS**

12 In 1981 petitioner pled guilty to first-degree murder and was sentenced to seven  
13 years to life. He alleges that he has exhausted these parole claims by way of state habeas  
14 petitions.

15 As grounds for federal habeas relief, petitioner asserts that: (1) there was not “some  
16 evidence” in the record to support the governor’s reversal of the Board of Parole Hearings’  
17 grant of a parole date; (2) petitioner’s offense was not “some evidence” to support the  
18 governor’s decision; (3) there was no evidence to support the governor’s conclusion that  
19 petitioner would be a danger to society if released; and (4) the governor’s reversal of the  
20 Board’s grant of a parole date was not supported by reliable evidence, because the evidence  
21 cited in support of the denial was thirty years old.

22 It appears that all petitioner’s issues are variations on a claim that the governor’s  
23 decision was not evidence adequate to satisfy due process, a claim that is cognizable in habeas.  
24 *See Biggs v. Terhune*, 334 F.3d 910, 916-17 (9th Cir. 2003) (warning that repeated denial of  
25 parole based on unchanging characteristics of offense might violate due process); *McQuillion v.*  
26 *Duncan*, 306 F.3d 895, 904 (9th Cir. 2002) (due process requires that at least “some evidence”  
27 support parole denial). An order to show cause will issue.

1 **CONCLUSION**

2 1. The clerk shall mail a copy of this order and the petition with all attachments to the  
3 respondent and the respondent's attorney, the Attorney General of the State of California. The  
4 clerk shall also serve a copy of this order on the petitioner.

5 2. Respondent shall file with the court and serve on petitioner, within sixty days of the  
6 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
7 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
8 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
9 trial record that have been transcribed previously and that are relevant to a determination of the  
10 issues presented by the petition.

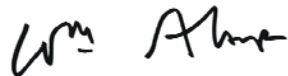
11 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
12 court and serving it on respondent within thirty days of his receipt of the answer.

13 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,  
14 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a  
15 motion, petitioner shall file with the court and serve on respondent an opposition or statement of  
16 non-opposition within thirty days of receipt of the motion, and respondent shall file with the  
17 court and serve on petitioner a reply within 15 days of receipt of any opposition.

18 4. Petitioner is reminded that all communications with the court must be served on  
19 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be  
20 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also  
21 must keep the court informed of any change of address by filing a separate paper with the clerk  
22 headed "Notice of Change of Address," and comply with any orders of the court within the time  
23 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this  
24 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

25 **IT IS SO ORDERED.**

26 Dated: October 3, 2008.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE