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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 ALEXANDER B. ARIZMENDI, AE0789, )  
12 Petitioner, ) No. C 12-4555 CRB (PR)  
13 vs. ) ORDER TO SHOW CAUSE  
14 P. BRAZELTON, Warden, ) (Docket # 4)  
15 Respondent. )  
16 \_\_\_\_\_ )

17 Petitioner, a state prisoner incarcerated at Pleasant Valley State Prison, has  
18 filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254  
19 challenging a conviction and sentence from Santa Clara County Superior Court.  
20 He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

21 **BACKGROUND**

22 Petitioner was convicted by a jury of possession of an assault weapon and  
23 criminal threats in a San Jose case and of possession of an assault weapon,  
24 negligent discharge of a firearm and being under the influence of a controlled  
25 substance in a Mountain View case. It also found true allegations that petitioner  
26 personally used an assault weapon in committing two of the counts for the  
27 purposes of a sentence enhancement. On June 22, 2010, he was sentenced to 11  
28 years and four months in state prison.

1           Petitioner unsuccessfully appealed his conviction to the California Court  
2 of Appeal and the Supreme Court of California. He also unsuccessfully sought  
3 habeas corpus relief from the state courts. On June 13, 2012, the Supreme Court  
4 of California denied his last state petition for a writ of habeas corpus.

## 5                                   **DISCUSSION**

### 6           A.     Standard of Review

7           This court may entertain a petition for a writ of habeas corpus "in behalf  
8 of a person in custody pursuant to the judgment of a State court only on the  
9 ground that he is in custody in violation of the Constitution or laws or treaties of  
10 the United States." 28 U.S.C. § 2254(a).

11           It shall "award the writ or issue an order directing the respondent to show  
12 cause why the writ should not be granted, unless it appears from the application  
13 that the applicant or person detained is not entitled thereto." Id. § 2243.

### 14           B.     Claims

15           Petitioner seeks federal habeas corpus relief by raising several claims,  
16 including improper joinder of the San Jose and Mountain view cases, convictions  
17 for possession of assault weapon violate Second Amendment right to bear arms,  
18 ineffective assistance of counsel, illegal sentence enhancement, insufficient  
19 evidence to support criminal threats and negligent discharge of a firearm  
20 convictions, and prosecutorial misconduct. Liberally construed, the claims  
21 appear cognizable under § 2254 and merit an answer from respondent. See  
22 Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must  
23 construe pro se petitions for writs of habeas corpus liberally).

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1 **CONCLUSION**

2 For the foregoing reasons and for good cause shown,

3 1. Petitioner's request to proceed in forma pauperis (docket # 2) is  
4 GRANTED.

5 2. The clerk shall serve a copy of this order and the petition and all  
6 attachments thereto on respondent and respondent's attorney, the Attorney  
7 General of the State of California. The clerk also shall serve a copy of this order  
8 on petitioner.

9 3. Respondent shall file with the court and serve on petitioner, within  
10 60 days of the issuance of this order, an answer conforming in all respects to Rule  
11 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
12 habeas corpus should not be granted. Respondent shall file with the answer and  
13 serve on petitioner a copy of all portions of the state trial record that have been  
14 transcribed previously and that are relevant to a determination of the issues  
15 presented by the petition.

16 If petitioner wishes to respond to the answer, he shall do so by filing a  
17 traverse with the court and serving it on respondent within 30 days of his receipt  
18 of the answer.

19 4. Respondent may file a motion to dismiss on procedural grounds in  
20 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the  
21 Rules Governing Section 2254 Cases. If respondent files such a motion,  
22 petitioner must serve and file an opposition or statement of non-opposition not  
23 more than 28 days after the motion is served and filed, and respondent must serve  
24 and file a reply to an opposition not more than 14 days after the opposition is  
25 served and filed.

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1           5.       Petitioner is reminded that all communications with the court must  
2 be served on respondent by mailing a true copy of the document to respondent's  
3 counsel. Petitioner must also keep the court and all parties informed of any  
4 change of address.

5 SO ORDERED.

6 DATED: Feb. 1, 2013



CHARLES R. BREYER  
United States District Judge