

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOSEPH GARDNER,  
Plaintiff,  
v.  
WILLIAM MUNIZ,  
Defendant.

Case No. 16-cv-02663-EDL

**ORDER TO SHOW CAUSE**

Re: Dkt. No. 1

Petitioner Robert Gardner, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**I. BACKGROUND**

Petitioner was convicted by a jury in a California court of first-degree murder in violation of California Penal Code section 187, torture in violation of California Penal Code section 206, burglary in violation of California Penal Code section 459, and grand theft in violation of California Penal Code section 487. Petitioner was sentenced to twenty-five years to life imprisonment for murder, a consecutive term of one year and four months for burglary, and a consecutive term of eight months for grand theft. Petitioner was also sentenced to life imprisonment for torture, but that punishment was stayed pursuant to California Penal Code section 654. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on February 18, 2015 denied review of his petition.

**II. DISCUSSION**

**A. Legal Standard**

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). It shall “award the writ or issue an order directing the respondent to show cause why the writ should

1 not be granted, unless it appears from the application that the applicant or person detained is not  
2 entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations  
3 in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. See  
4 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

5 **B. Petitioner’s Legal Claims**

6 Petitioner seeks federal habeas corpus relief by raising the following claims: (1) denial of  
7 his Sixth Amendment right to self-representation; and (2) violation of his Fifth and Fourteenth  
8 Amendment rights against self-incrimination. Liberally construed, the claims appear colorable  
9 under 28 U.S.C. § 2254 and merit an answer from respondents.


10 **III. CONCLUSION**

11 For the foregoing reasons and for good cause shown:

- 12 1. The clerk shall serve by certified mail a copy of this order and the petition  
13 and all attachments thereto upon respondents. The clerk shall also serve a copy of  
14 this order on petitioner and his counsel.
- 15 2. Respondents shall file with the court and serve on petitioner, within 60 days  
16 of the date of this order, an answer conforming in all respects to Rule 5 of the Rules  
17 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
18 not be issued. Respondent shall file with the answer and serve on petitioner a copy  
19 of all portions of the administrative record that are relevant to a determination of  
20 the issues presented by the petition.
- 21 3. If the petitioner wishes to respond to the answer, he shall do so by filing a  
22 traverse with the court and serving it on respondent within 30 days of his receipt of  
23 the answer.

24 **IT IS SO ORDERED.**

25 Dated: May 31, 2016

26   
27 ELIZABETH D. LAPORTE  
28 United States Magistrate Judge