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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY PEREZ,

No. C 08-4471 PJH (PR)

Petitioner,

**ORDER TO SHOW CAUSE**

v.

B. CURRY, Warden,

Respondent.  
\_\_\_\_\_ /

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He 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).

**BACKGROUND**

In 1986 petitioner pled guilty in Orange County Superior Court to a charge of second degree murder. He received a sentence of fifteen years to life in prison. On July 26, 2006, the Board of Parole Hearings denied him parole for the eighth time. He alleges that he has exhausted these parole claims by way of state habeas petitions.

**DISCUSSION****A. Standard of Review**

United States district courts may entertain a petition for a writ of habeas corpus brought by a state prisoner and directed to a judgment of a state court “only on the ground that [the prisoner] is in custody in violation of the Constitution or laws or treaties of the

1 United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

2 Habeas corpus petitions must meet heightened pleading requirements. *McFarland*  
3 *v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed  
4 by a prisoner who is in state custody pursuant to a judgment of a state court must "specify  
5 all the grounds for relief which are available to the petitioner ... and shall set forth in  
6 summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the  
7 Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient,  
8 for the petition is expected to state facts that point to a 'real possibility of constitutional  
9 error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st  
10 Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient are  
11 subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d  
12 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

13 **B. Legal Claims**

14 As grounds for federal habeas relief, petitioner asserts that the denial of parole was  
15 not supported by sufficient evidence. This is sufficient to require a response. See *Biggs v.*  
16 *Terhune*, 334 F.3d 910, 916-17 (9th Cir. 2003) (warning that repeated denial of parole  
17 based on unchanging characteristics of offense might violate due process); *McQuillion v.*  
18 *Duncan*, 306 F.3d 895, 904 (9th Cir. 2002) (due process requires that at least "some  
19 evidence" support parole denial).

20 **CONCLUSION**

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

24 2. Respondent shall file with the court and serve on petitioner, within sixty days of  
25 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
26 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
27 granted. Respondent shall file with the answer and serve on petitioner a copy of all  
28 portions of the state trial record that have been transcribed previously and that are relevant

1 to a determination of the issues presented by the petition.

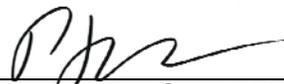
2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
3 the court and serving it on respondent within thirty days of his receipt of the answer.

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

10 4. Petitioner is reminded that all communications with the court must be served on  
11 respondent by mailing a copy of the document to respondent's counsel. Petitioner also  
12 must keep the court informed of any change of address by filing a separate paper with the  
13 clerk headed "Notice of Change of Address," and comply with any orders of the court within  
14 the time allowed, or ask for an extension of that time. Failure to do so may result in the  
15 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure  
16 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable  
17 in habeas cases).

18 **IT IS SO ORDERED.**

19 Dated: October 23, 2008.



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PHYLLIS J. HAMILTON  
United States District Judge

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