

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

3 RONALD VELASQUEZ,  
4 Petitioner,

No. C 10-01814 SBA (PR)

**ORDER OF DISMISSAL**

5 v.

6 GEORGE J. GIURBINO, Warden,  
7 Respondent.

8 \_\_\_\_\_/  
9 Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28  
10 U.S.C. § 2254. His application for leave to proceed in forma pauperis has been granted.

11 In an Order dated September 1, 2010, the Court issued an Order directing Respondent to  
12 show cause why the petition should not be granted.

13 On September 13, 2010, Petitioner submitted a letter to the Court conceding that he has not  
14 exhausted all his state judicial remedies prior to filing the present petition. Therefore, he states he  
15 "intend[s] to utilize all levels of the state court for review of this petition prior to submitting to the  
16 United States District Court and the California Supreme Court, if necessary." (Pet'r Sept. 13, 2010  
17 Letter at 2.)

18 Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact  
19 or length of their confinement are first required to exhaust state judicial remedies by presenting the  
20 highest state court available with a fair opportunity to rule on the merits of each and every claim  
21 they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-  
22 16 (1982). If available state remedies have not been exhausted as to all claims, the district court  
23 must dismiss the petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A  
24 dismissal solely for failure to exhaust is not a bar to returning to federal court after exhausting  
25 available state remedies. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

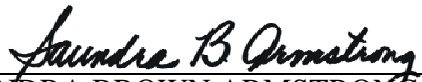
26 Because Petitioner concedes that he has not exhausted all his state remedies, his federal  
27 petition is unexhausted and must be DISMISSED. This dismissal is without prejudice to Petitioner  
28 returning to state court to exhaust his state remedies and then filing a new federal habeas corpus

1 petition. Should he do so, he is advised to file his new federal habeas corpus petition as soon as  
2 possible after his state court proceedings have concluded. The Court makes no ruling at this time on  
3 the issue of the timeliness of any future federal petition.

4 The Court has rendered its final decision on this matter; therefore, this Order TERMINATES  
5 Plaintiff's case. The Clerk of the Court shall terminate any pending motions and close the file.

6 IT IS SO ORDERED.

7 DATED: 9/23/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

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5  
6 RONALD VELASQUEZ,  
7 Plaintiff,

Case Number: CV10-01814 SBA

**CERTIFICATE OF SERVICE**

8 v.

9 GEORGE J. GIURBINO et al,  
10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on September 23, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

16  
17 Ronald Velasquez T-45458  
18 Pelican Bay State Prison  
19 P.O. Box 7500 SHU C6/113  
Crescent City, CA 95531-7500

20 Dated: September 23, 2010

21 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk