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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BARTON FARRIS WEST,  
Petitioner,  
v.  
SHAWN HATTON, et al.,  
Respondent.

Case No. [17-cv-01440-PJH](#)

**ORDER GRANTING LEAVE TO  
PROCEED IN FORMA PAUPERIS AND  
FOR RESPONDENT TO SHOW CAUSE**

Re: Dkt. Nos. 2, 6

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Lake County which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

**BACKGROUND**

Petitioner states his case involves an incident where he was driving while intoxicated and was in a car accident where an individual was killed. Petition at 41. Petitioner pleaded nolo contendere to murder and he states that he had a prior serious felony. *Id.* He was sentenced on April 25, 2011, to fifteen years to life plus five years. Petition at 1. He did not appeal his case but filed a habeas petition in the California Supreme Court on January 11, 2017, that was denied on February 15, 2017. Petition at 2-3, 10, 12

**DISCUSSION**

**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

1 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
2 § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet  
3 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An  
4 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
5 pursuant to a judgment of a state court must “specify all the grounds for relief available to  
6 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules  
7 Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the  
8 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”  
9 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
10 1970)).

### 11 **LEGAL CLAIMS**

12 Petitioner’s sole ground for federal habeas relief asserts that the California second  
13 degree felony murder law is constitutionally invalid pursuant to *Johnson v. United States*,  
14 135 S.Ct. 2551 (2015). *Johnson* was found to be retroactive on collateral review in  
15 *Welch v. United States*, 136 S.Ct. 1257 (2016). Liberally construed, this claim is  
16 sufficient to require a response.<sup>1</sup>

### 17 **CONCLUSION**

18 1. Petitioner’s motion for leave to proceed in forma pauperis (Docket Nos. 2,  
19 6) is **GRANTED**.

20 2. The clerk shall serve by regular mail a copy of this order and the petition  
21 and all attachments thereto on respondent and respondent’s attorney, the Attorney  
22 General of the State of California. The clerk also shall serve a copy of this order on  
23 petitioner.  
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27 <sup>1</sup> While *Johnson* involved the federal Armed Career Criminal Act, there is at least a  
28 colorable argument that the rational applies to California’s law. See *Renteria v.*  
*Asunsion*, 2016 WL 7336558, at \*3 (C.D. Cal. 2016); *Why California’s Second-Degree*  
*Felony-Murder Rule is Now Void for Vagueness*, 43 Hastings Const. L.Q. 1 (Fall 2015).

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3. Respondent shall file with the court and serve on petitioner, within fifty-six (56) days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the date this order is entered. If a motion is filed, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within fourteen (14) days of receipt of any opposition.

5. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

**IT IS SO ORDERED.**

Dated: April 17, 2017



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PHYLLIS J. HAMILTON  
United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BARTON FARRIS WEST,  
Plaintiff,

v.

SHAWN HATTON, et al.,  
Defendants.

Case No. [17-cv-01440-PJH](#)

**CERTIFICATE OF SERVICE**

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

That on April 17, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Barton Farris West  
Correctional Training Facility (CTF)  
P.O. Box 689  
Soledad, CA 93960-0689

Dated: April 17, 2017

Susan Y. Soong  
Clerk, United States District Court

By:   
Kelly Collins, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON