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United States District Court  
For the Northern District of California

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

JOSE ANTONIO MEREL,	)	No. C 10-05077 JW (PR)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE
	)	
vs.	)	
	)	
ANTHONY HEDGPETH, Warden,	)	
	)	
Respondent.	)	
_____	)	

Petitioner, a California prisoner incarcerated at the Salinas Valley State Prison in Soledad, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee.

**BACKGROUND**

According to the petition, petitioner was found guilty by a jury in Alameda County Superior Court of second degree murder. Petitioner was sentenced to 15 years to life in state prison on January 27, 2006. (Id.)

Petitioner filed state habeas petitions challenging the execution of his sentence, with the California Supreme Court denying review on August 19, 2009. (Id. at 4.) Petitioner filed the instant federal habeas petition on November 9, 2010.

1 **DISCUSSION**

2 A. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
4 person in custody pursuant to the judgment of a State court only on the ground that  
5 he is in custody in violation of the Constitution or laws or treaties of the United  
6 States.” 28 U.S.C. § 2254(a).

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

10 B. Legal Claims

11 Petitioner claims that the prosecution violated his rights to due process and to  
12 a fair trial in failing to treat him differently from the other co-defendants when the  
13 prosecution admitted that he did not see petitioner “as a killer” but allowed  
14 petitioner to receive a harsher sentence than the more culpable co-defendants.  
15 Liberally construed, petitioner’s claims appear cognizable under § 2254 and merit an  
16 answer from respondent.

17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown,

19 1. The clerk shall serve by certified mail a copy of this order and the  
20 petition and all attachments thereto on respondent and respondent’s attorney, the  
21 Attorney General of the State of California. The clerk also shall serve a copy of this  
22 order on petitioner.

23 2. Respondent shall file with the court and serve on petitioner, within  
24 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to  
25 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
26 habeas corpus should not be issued. Respondent shall file with the answer and serve  
27 on petitioner a copy of all portions of the state trial record that have been transcribed  
28

1 previously and that are relevant to a determination of the issues presented by the  
2 petition.

3 If petitioner wishes to respond to the answer, he shall do so by filing a  
4 traverse with the court and serving it on respondent within **thirty (30) days** of his  
5 receipt of the answer.

6 3. Respondent may file a motion to dismiss on procedural grounds in lieu  
7 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
8 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall  
9 file with the court and serve on respondent an opposition or statement of non-  
10 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file  
11 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of  
12 any opposition.

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

17  
18 DATED: February 11, 2011 \_\_\_\_\_

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JOSE ANTONIO MEREL,  
Petitioner,

Case Number: CV10-05077 JW

**CERTIFICATE OF SERVICE**

v.

ANTHONY HEDGPETH, Warden,  
Respondent.

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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 2/11/2011, 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.

Jose Antonio Merel F 18721  
Salinas Valley State Prison  
Post Office Box 1050  
Soledad, CA 93960-1050

Dated: 2/11/2011

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk