

No. \_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

LAWTIS DONALD RHODEN,

*Petitioner,*

vs.

CALIFORNIA DEPT. OF STATE HOSPITALS,

*Respondent,*

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On Petition for Certiorari to the United States Court  
of Appeals for the Ninth Circuit

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**APPENDIX OF EXHIBITS TO  
PETITION FOR A WRIT OF CERTIORARI**

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Petitioner in pro se

On the Petition for Writ of Certiorari

## **INDEX OF EXHIBITS**

**EXHIBIT “A”** - Magistrate Judge’s Findings & Recommendations on March 12, 2021

**EXHIBIT “B”** – Court’s adoption of Magistrates Recommendations on June 29, 2021

**EXHIBIT “C”** – Ninth Circuit Court of Appeals Denial of COA on November 16, 2021

UNITED STATES COURT OF APPEALS

**FILED**

FOR THE NINTH CIRCUIT

NOV 16 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LAWTIS DONALD RHODEN,

Petitioner-Appellant,

v.

BRANDON PRICE, Acting, CSH Executive  
Director,

Respondent-Appellee.

No. 21-55780

D.C. No. 8:20-cv-01096-MWF-PD  
Central District of California,  
Santa Ana

ORDER

Before: NGUYEN and FORREST, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 LAWTIS DONALD RHODEN,  
12 Petitioner,

13 v.

14 BRANDON PRICE, Director,  
15 Respondent.  
16

Case No. 8:20-cv-01096-MWF (PD)

**ORDER ACCEPTING  
FINDINGS, CONCLUSIONS,  
AND RECOMMENDATION OF  
UNITED STATES  
MAGISTRATE JUDGE**

17  
18 On March 12, 2021, the United States Magistrate Judge issued a Report  
19 and Recommendation ("Report"), recommending that Petitioner's Petition for  
20 Writ of Habeas Corpus be denied and that this action be dismissed with  
21 prejudice. [Dkt. No. 8.] On March 26, 2021, Petitioner filed his Objections.  
22 [Dkt. No. 9.]

23 In his Objections, Petitioner reiterates the argument in his Petition that  
24 California's Sexually Violent Predator Act ("SVPA") violates his constitutional  
25 right to due process because it prohibits him from petitioning for  
26 unconditional release without first obtaining the approval of the Department  
27 of State Hospitals ("DSH"). That argument is addressed in the Report. In his  
28 Objections, he also contends, for the first time, that his continued confinement

1 violates due process because has proven that he is no longer a Sexually  
2 Violent Predator (“SVP”). [Dkt. No. 9 at 5.]<sup>1</sup> In support of this contention, he  
3 relies primarily on an opinion from the psychologist he retained, Dr. Brian  
4 Abbott, that he no longer meets the SVP criteria. [*Id.* at 11.] Petitioner also  
5 notes that, since being found an SVP in 2013, he has undergone years of  
6 treatment. [*Id.* at 9.]

7 This objection is not well-taken because it ignores the conclusions of the  
8 DHS medical director and another psychologist that Petitioner continues to  
9 meet the SVP criteria. [Report at 2.] Thus, although Petitioner has shown  
10 that there is conflicting evidence regarding his status as an SVP, he has not  
11 proven that he no longer meets the SVP criteria. In any event, as discussed in  
12 the Report, the SVPA’s statutory scheme provides civilly committed persons  
13 reasonable opportunities for release. Pursuant to that statutory scheme,  
14 Petitioner was granted conditional release despite a determination that he  
15 stills meets the SVP criteria. He declined it. Given the unique dangers posed  
16 by persons found to be SVP’s, Petitioner has not shown that the state court of  
17 appeal unreasonably concluded that he cannot establish a due process  
18 violation simply because he cannot petition for unconditional release without  
19 first obtaining a recommendation from the DSH. *See Wilkinson v. Austin*, 545  
20 U.S. 209, 224 (2005) (explaining that “requirements of due process are  
21 ‘flexible’” and call only for “procedural protections as the particular situation  
22 demands”) (citation omitted).

23 Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has  
24 reviewed the Petition, the other records on file records herein, the Magistrate  
25 Judge’s Report, and Petitioner’s objections to the Report. The Court has

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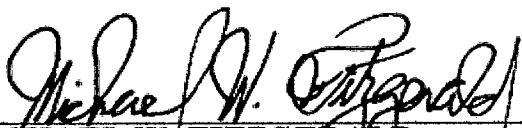
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27 <sup>1</sup> The Court exercises its discretion to consider the argument. *See Brown v. Roe*, 279  
28 F.3d 742, 744-45 (9th Cir. 2002) (district court has discretion, but is not required, to  
consider claims presented in party’s objections to magistrate judge’s report and  
recommendation). Petitioner’s other objections are addressed in the Report.

1 engaged in a *de novo* review of those portions of the Report to which objections  
2 have been made. The Court concurs with and accepts the findings and  
3 conclusions of the Magistrate Judge.

4 ACCORDINGLY, IT IS ORDERED:

- 5 1. The Report and Recommendation is accepted.  
6 2. Judgment shall be entered consistent with this Order.  
7 3. The clerk shall serve this Order and the Judgment on counsel or  
8 parties of record.

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10 DATED: June 29, 2021

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12 MICHAEL W. FITZGERALD  
13 UNITED STATES DISTRICT JUDGE  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 LAWTIS DONALD RHODEN,

12 Petitioner,

13 v.

14 BRANDON PRICE, Director

15 Respondent.  
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Case No. CV 20-1096-MWF (PD)

**REPORT AND  
RECOMMENDATION OF  
UNITED STATES  
MAGISTRATE JUDGE**

18 This Report and Recommendation is submitted to the Honorable  
19 Michael W. Fitzgerald, United States District Judge, pursuant to 28 U.S.C.  
20 § 636 and General Order 05-07 of the United States District Court for the  
21 Central District of California. For the reasons discussed below, it is  
22 recommended that the Petition for Writ of Habeas Corpus be dismissed with  
23 prejudice.

24 **I. Procedural History and Petitioner's Contentions**

25 Petitioner Lawtis Donald Rhoden filed the instant Petition for Writ of  
26 Habeas Corpus under 28 U.S.C. § 2254, challenging his state civil  
27 commitment on two grounds: (1) California's Sexually Violent Predator Act  
28 ("SVPA") violates his constitutional right to due process because it prohibits



1 him from petitioning for unconditional release without first obtaining the  
2 approval of the Department of State Hospitals (“DSH”); and (2) the SPVA  
3 violates the federal guarantee to equal protection under the law by subjecting  
4 SVPs to standards for obtaining unconditional release from civil commitment  
5 that are more onerous than the standards applicable to persons found not  
6 guilty by reason of insanity and to mentally disordered offenders. Respondent  
7 filed an Answer to the Petition.<sup>1</sup>

## 8 **II. Statement of Facts**

9 The following statement of facts is derived from the relevant California  
10 Court of Appeal opinion.<sup>2</sup> [Dkt. No. 6-7 at 2-3.] Petitioner was convicted in  
11 Orange County Superior Court of raping multiple teenage girls. In July 2013,  
12 a jury concluded that he was a sexually violent predator (“SVP”) and he was  
13 thereafter committed to the custody of the DSH for an indeterminate term.  
14 Petitioner appealed, and the California Court of Appeal affirmed.

15 In October 2015, the DSH medical director concluded that Petitioner  
16 continued to meet SVP criteria but was suitable for conditional release from  
17 civil commitment. In an April 2017 evaluation, a psychologist likewise  
18 determined that Petitioner continued to meet SVP criteria but was suitable  
19 for conditional release.

20 Petitioner did not agree to conditional release. Instead, he retained a  
21 psychologist, Dr. Brian Abbott, who determined that Petitioner did not meet

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22 <sup>1</sup>Petitioner’s reply was due on September 14, 2020. [See Dkt. No. 3 at 2-3.] Petitioner  
23 did not file a reply by that date, nor did he request an extension of time to file a reply  
24 before that date or in the over five months since that date.

25 <sup>2</sup> The Court “presume[s] that the state court’s findings of fact are correct unless [the]  
26 [p]etitioner rebuts that presumption with clear and convincing evidence.” *Tilcock v.*  
27 *Budge*, 538 F.3d 1138, 1141 (9th Cir. 2008) (citations omitted); 28 U.S.C. § 2254(e)(1).  
28 Because Petitioner has not rebutted the presumption, the Court relies on the state  
court’s recitation of the facts. To the extent that an evaluation of Petitioner’s  
individual claims depends on an examination of the trial record, the Court herein has  
independently evaluated the record specific to those claims.

1 the SVP criteria and was unlikely to engage in sexually violent conduct if he  
2 was unconditionally released. Based on Dr. Abbott's conclusion, Petitioner  
3 filed a state court petition in February 2018 for unconditional release from his  
4 SVP commitment. The trial court denied the petition with prejudice,  
5 reasoning that the DSH had not determined either that Petitioner no longer  
6 met SVP criteria or that he should be considered for unconditional release.

### 7 **III. Standard of Review**

8 The standard of review is set forth in 28 U.S.C. § 2254(d), as amended  
9 by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA). *See*  
10 28 U.S.C. § 2254(d); *see also Lindh v. Murphy*, 521 U.S. 320, 336 (1997).

11 Under AEDPA, a federal court may not grant habeas relief on a claim  
12 adjudicated on its merits in state court unless that adjudication "resulted in a  
13 decision that was contrary to, or involved an unreasonable application of,  
14 clearly established Federal law, as determined by the Supreme Court of the  
15 United States," or "resulted in a decision that was based on an unreasonable  
16 determination of the facts in light of the evidence presented in the State court  
17 proceeding." 28 U.S.C. § 2254(d); *see Williams v. Taylor*, 529 U.S. 362, 402  
18 (2000).

19 A state court decision is "contrary to" clearly established federal law if  
20 the decision applies a rule that contradicts the governing Supreme Court law  
21 or reaches a result that differs from a result the Supreme Court reached on  
22 "materially indistinguishable" facts. *Williams*, 529 U.S. at 405-06. A decision  
23 involves an "unreasonable application" of federal law if "the state court  
24 identifies the correct governing legal principle from [Supreme Court] decisions  
25 but unreasonably applies that principle to the facts of the prisoner's case." *Id.*  
26 at 413.

27 Where, as here, more than one state court adjudicated the petitioner's  
28 claims, on habeas review the federal court analyzes the last reasoned decision.  
*Bailey v. Rae*, 339 F.3d 1107, 1112-13 (9th Cir. 2003). Thus, a federal habeas

1 court looks through ambiguous or unexplained state court decisions to the last  
2 reasoned decision to determine whether that decision was contrary to or an  
3 unreasonable application of clearly established federal law. *Id.*

4 Petitioner asserted both of his current grounds for relief to the  
5 California Court of Appeal, which issued a reasoned opinion rejecting them.  
6 Thereafter, the California Supreme Court summarily denied the grounds.  
7 [See Dkt. Nos. 6-4 through 6-9.] Accordingly, this Court reviews under  
8 AEDPA's deferential standard.

#### 9 **IV. Discussion**

##### 10 **A. Statutory Framework of the SVPA**

11 The SVPA provides for the civil commitment of a person found to be "a  
12 person who has been convicted of a sexually violent offense against one or  
13 more victims and who has a diagnosed mental disorder that makes the person  
14 a danger to the health and safety of others in that it is likely that he or she  
15 will engage in sexually violent criminal behavior." Cal. Welf. & Inst. Code  
16 § 6600(a)(1).

17 A person who is in custody under the jurisdiction of the California  
18 Department of Corrections and Rehabilitation is screened prior to his  
19 scheduled release from prison and, if he screens positive, is subjected to a full  
20 evaluation by the DSH. *Id.* § 6601. If formal commitment proceedings are  
21 initiated, the person is entitled to a jury trial, where the State must convince  
22 a jury beyond a reasonable doubt that the person is an SVP. *Id.* §§ 6603(a),  
23 6600(f), 6604.

24 Persons found to be SVPs are committed to the custody of the DSH for  
25 an indeterminate term of commitment. *See id.* § 6604. The SVPA requires  
26 the DSH to conduct examinations of civilly committed persons and to submit  
27 an annual report with the committing court considering "whether the  
28 committed person currently meets the definition of a sexually violent predator  
and whether conditional release to a less restrictive alternative or an

1 unconditional release is in the best interest of the person and conditions can  
 2 be imposed that would adequately protect the community.” *Id.* §§ 6604.9(a),  
 3 6605.

4 The SVPA provides two procedures through which civilly committed  
 5 persons can obtain release. First, they can petition for unconditional release  
 6 after obtaining a recommendation from the DSH for unconditional release.  
 7 *See id.* §§ 6604.9(b)&(d), 6605(a)(1). Second, absent such a recommendation  
 8 from the DSH, they can petition for conditional release and, if successful,  
 9 petition for unconditional release after completing one year of conditional  
 10 release. *See id.* § 6608(a)&(m).

#### 11 **B. Due Process**

12 Petitioner’s first ground for relief is that the SVPA violates his  
 13 constitutional right to due process because it prohibits him from petitioning  
 14 for unconditional release without first obtaining the approval of the DSH. As  
 15 a result, according to Petitioner, the SVPA “imposes what could be a lifetime  
 16 commitment” without affording him “any reasonable opportunity for release.”  
 17 [Dkt. No. 1 at 19.]

18 The California Court of Appeal held that the SVPA’s requirement that  
 19 civilly committed persons first seek conditional release before seeking  
 20 unconditional release did not violate any due process protections. The court  
 21 reasoned that California’s legitimate interests in protecting society from  
 22 people who were previously convicted of sexually violent offenses and found to  
 23 be mentally ill and dangerous warranted restricting such people from  
 24 petitioning for unconditional release without any precondition. [Dkt. No. 6-7  
 25 at 4-7.]

26 The court of appeal reasonably rejected Petitioner’s due process claim.  
 27 The Supreme Court has never held that a person who is civilly committed  
 28 under state law after having been convicted of a sexually violent crime and  
 found to have been mentally ill and dangerous is entitled to petition for

1 unconditional release without preconditions. The lack of clear Supreme Court  
 2 precedent on this issue, alone, dictates that the court of appeal's rejection of  
 3 Petitioner's claim was neither an unreasonable application of, nor contrary to  
 4 clearly established Supreme Court precedent. See *Carey v. Musladin*, 549  
 5 U.S. 70, 76 127 S. Ct. 649, 166 L. Ed. 2d 482 (2006) (where Supreme Court  
 6 precedent gives no clear answer to question presented, "it cannot be said that  
 7 the state court 'unreasonab[ly] appli[ed] clearly established Federal law").

8 Moreover, the SVPA's statutory scheme provides Petitioner reasonable  
 9 opportunities for release. Specifically, it allows him to petition for  
 10 unconditional release after either successfully completing a one-year period of  
 11 conditional release or obtaining a recommendation for unconditional release  
 12 from the DSH. Given the unique danger posed by someone found to be an  
 13 SVP, the court of appeal reasonably concluded that those procedures provide  
 14 the requisite procedural safeguards to satisfy due process. See *Wilkinson v.*  
 15 *Austin*, 545 U.S. 209, 224 (2005) (explaining that "requirements of due  
 16 process are 'flexible'" and call only for "procedural protections as the  
 17 particular situation demands") (citation omitted); see also *Jones v. United*  
 18 *States*, 463 U.S. 354, 361 (1983) (upholding state statute providing for civil  
 19 commitment of criminal defendants found not guilty by reason of insanity for  
 20 indefinite period of time where, under statute, defendants could either prove  
 21 by preponderance of evidence that they were no longer mentally ill or  
 22 dangerous or obtain certificate of recovery from appropriate state agency).<sup>3</sup>

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23  
 24 <sup>3</sup> To the extent that Petitioner challenges the SVPA's release procedures as  
 25 unconstitutionally placing the burden on him, as opposed to the State, to show that  
 26 he meets the criteria for unconditional release, that challenge is meritless. See  
 27 *Taylor v. San Diego Cnty.*, 800 F.3d 1164, 1173 (9th Cir. 2015) ("Given the absence  
 28 of established Supreme Court precedent regarding the constitutionality of release  
 procedures that place the burden of proof upon the individual challenging continued  
 commitment, the California Court of Appeal could not and did not unreasonably  
 apply federal law in denying Taylor's due process claim."); see also *Jones*, 463 U.S.  
 at 358 (Due Process Clause permitted state to civilly commit criminal defendant

1 Accordingly, habeas relief is not warranted as to this claim.

2 **C. Equal Protection**

3 Petitioner's second ground for relief is that the SVPA violates the Equal  
4 Protection Clause by subjecting SVPs to more onerous standards to obtain  
5 unconditional release from civil commitment than the standards applicable to  
6 individuals found not guilty by reason of insanity and mentally disordered  
7 offenders. [Dkt. No. 1 at 23-28.]

8 The Ninth Circuit has rejected the contention that SVPs are similarly  
9 situated to other civilly committed individuals. *See Taylor*, 800 F.3d at 1170-  
10 71 ("California's expressed legislative policy is to protect the public from the  
11 increased danger posed by sexually violent predators. Considering this policy,  
12 both we and the state of California have recognized that sexually violent  
13 predators are not similarly situated to other civilly committed individuals.")  
14 (citations omitted); *Litmon v. Harris*, 768 F.3d 1237, 1243 (9th Cir. 2014)  
15 ("The equal protection challenge fails because neither mentally disordered  
16 offenders nor mentally disordered sex offenders are similarly situated to  
17 sexually violent predators."). Moreover, with respect to the procedural  
18 question at issue here, the state court reasonably concluded that California  
19 may make a distinction between SVPs on the one hand and mentally  
20 disordered offenders and individuals found not guilty by reason of insanity on  
21 the other hand. *See Seeboth v. Allenby*, 789 F.3d 1099, 1106 (9th Cir. 2015).

22 Accordingly, the court of appeal's rejection of Petitioner's equal  
23 protection claim was neither contrary to, nor an unreasonable application of,  
24 clearly established federal law as determined by the Supreme Court. *See*  
25 *Taylor*, 800 F.3d at 1164 ("Because sexually violent predators are not  
26 similarly situated to other categories of mentally impaired detainees, the

27  
28 found not guilty by reason of insanity for indefinite period of time until defendant  
established by preponderance of the evidence that he was no longer mentally ill).

1 [state court's] denial of [Petitioner's] equal protection claim was not contrary  
2 to or an unreasonable application of federal law."); *see also Seeboth*, 789 F.3d  
3 at 1105-07 (state courts' determination that SVPs are not similarly situated to  
4 mentally disordered offenders and those found not guilty by reason of insanity  
5 for purpose of challenging lack of timing provision in SVPA was not  
6 unreasonable application of clearly established federal law).

7 **V. Recommendation**

8 It is recommended that the District Judge issue an Order: (1) accepting  
9 this Report and Recommendation; and (2) directing that judgment be entered  
10 denying the Petition and dismissing this action with prejudice.

11  
12 DATED: March 12, 2021

*Patricia Donahue*

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14 PATRICIA DONAHUE  
15 UNITED STATES MAGISTRATE JUDGE  
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**NOTICE**

Reports and Recommendations are not appealable to the Court of Appeals, but are subject to the right of any party to file Objections as provided in the Local Rules Governing Duties of Magistrate Judges, and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the Judgment of the District Court.