

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 6 2026

FOR THE NINTH CIRCUIT

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

TERRY ANTHONY CLAYTON,

Petitioner - Appellant,

v.

SARA ANGOL,

Respondent - Appellee.

No. 24-3015

D.C. No.

3:24-cv-00026-JMK

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Joshua M. Kindred, District Judge, Presiding

Submitted April 30, 2026**

Before: McKEOWN, N.R. SMITH, and H.A. THOMAS, Circuit Judges.

Petitioner Terry Anthony Clayton appeals the district court's *sua sponte* dismissal of his *pro se* habeas petition as procedurally defaulted. We have jurisdiction pursuant to 28 U.S.C. § 2253. We review *de novo* the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissal of a habeas petition. *Neiss v. Bludworth*, 114 F.4th 1038, 1044 (9th Cir. 2024).

The district court dismissed Clayton’s petition without first providing notice and an opportunity to respond. That procedure contravenes our precedent. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998) (“A habeas court must give a petitioner notice of the procedural default and an opportunity to respond to the argument for dismissal.”). Respondent concedes that the district court’s summary dismissal without notice was inconsistent with *Boyd* and warrants remand.

In light of that concession and our precedent, we vacate the judgment and remand for the district court to provide Clayton notice and an opportunity to respond. We do not reach the merits of the underlying procedural default issue.

VACATED and REMANDED.¹

¹ The pending motion to remand (Dkt. No. 31) is **DENIED AS MOOT**.