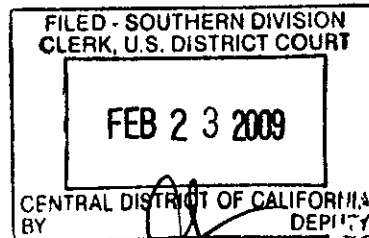


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL (Plaintiffs OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.

DATED: 2-23-09
[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

FLOYD WILLIAMS III and
FREDERICK LEROY HAYES, JR.,
Plaintiffs,
v.
BOARD OF PAROLE HEARINGS,
Defendant.

Case No. EDCV 08-00402-CBM (MLG)
MEMORANDUM OPINION AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH
LEAVE TO AMEND

Plaintiffs Floyd Williams III and Frederick Leroy Hayes, Jr. ("Plaintiffs") are state prisoners currently incarcerated at the Ironwood State Prison in Blythe, California. On April 15, 2008, Plaintiffs filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983, naming as Defendants the California Board of Parole Hearings and its commissioners and officers acting in their official capacity. Plaintiffs claimed that Defendants violated Plaintiffs' right to due process under the 14th Amendment of the United States Constitution by employing a "preponderance of the evidence" standard in parole suitability hearings, rather than a more stringent "clear and convincing evidence" standard. Plaintiffs sought a declaration

1 that the use of a "preponderance of the evidence" standard in parole
2 hearings is unconstitutional and a permanent injunction ordering
3 Defendants to discontinue use of the "preponderance of the evidence"
4 standard of proof in parole suitability hearings.

5 On September 2, 2008, Defendant filed a motion to dismiss the
6 complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On
7 October 31, 2008, the Court granted the motion to dismiss with leave
8 to amend. The Court found that the Defendants were entitled to
9 Eleventh Amendment Immunity and that the complaint failed to comply
10 with the requirements of Fed.R.Civ.P. 8, in that the facts did not
11 give sufficient notice of the claims that were being made. Plaintiffs
12 were specifically instructed as follows:

13 Here, from the sparsity of facts alleged in Plaintiffs'
14 complaint, the Court is unable to determine whether
15 Plaintiffs have stated a viable constitutional or federal
16 law claim against the officials of the State Board of
17 Parole Hearings. Plaintiffs have failed to allege any
18 facts that show: (1) which specific State Board of Parole
19 Hearings officials have supposedly violated Plaintiffs'
20 constitutional rights; (2) what particular standard of
21 evidence is currently employed by the State Board of Parole
22 Hearings; (3) whether Plaintiffs themselves have had a
23 parole hearing and been denied parole; (4) if so, what
24 particular standard of evidence was used at that parole
25 hearing; (5) alternatively, whether they are eligible for
26 parole in the future and if so, on what date; and (6) how
27 employing a "clear and convincing evidence" standard of
28 proof instead of the alleged use of a "preponderance of the

1 evidence" standard would specifically remedy Plaintiffs'
2 claim of violation of their federal due process rights. In
3 sum, Plaintiffs have not plead sufficient facts necessary
4 to survive a motion to dismiss.

5 On November 19, 2009, Plaintiffs filed their first amended
6 complaint. In that complaint, they named as Defendants Douglas
7 Drummond and Alejandro Armenta, both of whom are members of the
8 California Board of Parole Hearings. These Defendants are sued in
9 their official capacities. Also named as Defendants are fourteen John
10 Does. On January 22, 2009, the Board of Parole Hearings filed a
11 motion to dismiss the first amended complaint. Defendant claims that
12 Armenta and Drummond have not been served and that Defendants are
13 entitled to Eleventh Amendment immunity.¹ Plaintiffs have filed an
14 opposition to the motion.

15 The motion to dismiss shall be granted, but with leave to amend.
16 It is clear that the Board of Parole Hearings is no longer a
17 Defendant in this case as it was not named in the first amended
18 complaint. However, the individual Defendants were never served with
19 process. This is clearly the Court's error and shall be corrected
20 upon the filing of a second amended complaint.

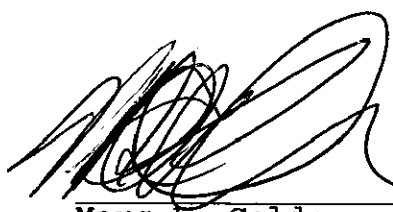
21 The Court finds, however, that the first amended complaint does
22 not comply with the requirements of Fed.R.Civ.P. 8 or the Court's
23 prior order. As noted in the previous order, a plaintiff must set
24 forth his claims in short and plain terms, and each factual

25
26 ¹ The Court is at a loss to understand why the doctrine of *Ex Parte*
27 *Young*, 209 U.S. 123 (1908) would not apply here, since a suit
28 challenging the constitutionality of a state official's actions is not
one against the state. See *Pennhurst State School & Hosp. v. Halderman*,
465 U.S. 89, 102 (1984).

1 allegation must be "simple, concise and direct." Fed. R. Civ. P.
2 8(e)(1). Here, the absence of specific factual allegations leaves the
3 Court without sufficient information to determine whether the claim
4 is ripe, whether there has been any injury to Plaintiffs, and the
5 factual and legal basis for the assertion that a different standard
6 of review is required for parole eligibility decisions. Because the
7 complaint is deficient and fails to comply with the previous order,
8 it shall be dismissed with leave to amend.

9 Plaintiffs may file a second amended complaint within **twenty-one**
10 **(21) days** of the date of this Order, remedying the deficiencies
11 identified above. The amended complaint must clearly identify the
12 specific facts on which Plaintiffs' claim is based. It should include
13 the date, time, place and circumstances under which the claim arose,
14 the full details of what each defendant did or failed to do, and the
15 damage or injury suffered by Plaintiffs as a result. It must comply
16 with the requirements of Federal Rule of Civil Procedure 8(a). If the
17 complaint meets these requirements, it shall be served on Defendants.
18 Otherwise, it shall be dismissed. Plaintiffs are cautioned that they
19 are responsible for presenting factually accurate information to the
20 Court. Failure to timely file the Second Amended Complaint will
21 result in the dismissal of the entire action with prejudice.

22 Dated: February 20, 2009

23
24
25 
26 _____
27 Marc L. Goldman
28 United States Magistrate Judge