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

RICHARD GONZALES,

Petitioner,

No. CIV S-06-2186 GEB DAD P

vs.

K. K. SISTO, Warden, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

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Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a January 24, 2006 decision by the Board of Parole Hearings to deny him parole for a period of three years. On May 13, 2008, petitioner filed a motion for summary judgment. Repeating the same arguments contained in his habeas petition, petitioner requests that the court grant his petition solely in light of the Ninth Circuit then-recent decision in Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008). Other than his citation to Hayward, petitioner has advanced no new arguments in his motion for summary judgment.

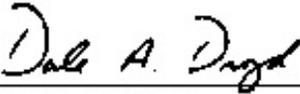
On May 16, 2008, the Ninth Circuit Court of Appeals granted a petition for an en banc rehearing in Hayward. Hayward v. Marshall, 527 F.3d 797 (9th Cir. 2008). Therefore, the panel decision in Hayward relied upon by petitioner in moving for summary judgment is no

1 longer citable precedent and cannot support petitioner's motion. This court has approximately  
2 thirty-five habeas petitions that have been submitted for decision longer than the instant petition.  
3 All of these petitions will be considered as quickly as possible but in order of submission.  
4 Petitioner has failed to demonstrate good cause for this court to address the merits of his habeas  
5 petition before other petitions that have been under submission for a longer period of time.  
6 Accordingly, petitioner's motion for summary judgment should be denied.

7 For the foregoing reasons, IT IS HEREBY RECOMMENDED that petitioner's  
8 May 13, 2008 motion for summary judgment (Doc. No. 19) be denied.

9 These findings and recommendations will be submitted to the United States  
10 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
11 twenty days after being served with these findings and recommendations, any party may file  
12 written objections with the court. The document should be captioned "Objections to Findings  
13 and Recommendations." The parties are advised that failure to file objections within the  
14 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
15 F.2d 1153 (9th Cir. 1991).

16 DATED: January 20, 2009.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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