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

JOHN MONTALVO,

Petitioner,

No. CIV S-08-1224 GEB KJM P

vs.

MALFI, Acting Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

Since petitioner may be entitled to the requested relief if the claimed violation of constitutional rights is proved, respondents will be directed to file a response to petitioner’s application.

Petitioner has also filed a motion to stay the instant proceeding so that he may exhaust another, unspecified issue. The court has the authority to stay a habeas petition so that the petitioner can exhaust state court remedies if the petitioner shows his claims are potentially meritorious and good cause for failure to exhaust earlier. Rhines v. Weber, 544 U.S. 269, 277 (2005). Petitioner has made no showing of the issues he seeks to raise or of his reason for failing to raise them in the state courts earlier.

1 He has also filed a request for judicial notice and court intervention, apparently
2 relating to his ability to file his request to proceed in forma pauperis. Petitioner has paid the
3 filing fee, which renders this request moot.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Respondent is directed to file a response to petitioner's application within
6 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer
7 shall be accompanied by any and all transcripts or other documents relevant to the determination
8 of the issues presented in the application. See Rule 5, Fed. R. Governing § 2254 Cases;

9 2. Petitioner's reply, if any, shall be filed and served within thirty days of service
10 of an answer;

11 3. If the response to petitioner's application is a motion, petitioner's opposition
12 or statement of non-opposition shall be filed and served within thirty days of service of the
13 motion, and respondent's reply, if any, shall be filed within fifteen days thereafter;

14 4. The Clerk of the Court shall serve a copy of this order together with a copy of
15 petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on Jennifer
16 Neill, Senior Assistant Attorney General;

17 5. Petitioner's motion for a stay (docket no 23) is denied without prejudice; and

18 6. Petitioner's motion for judicial notice (docket no. 8) is denied as moot.

19 DATED: January 9, 2009.

20 
21 _____
22 U.S. MAGISTRATE JUDGE

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