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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 BRIAN FOWLIE,

No. CIV S-08-2744 GGH P

12 vs.  
13

14 D.K. SISTO,

ORDER

15 \_\_\_\_\_/  
16 Petitioner, a state prisoner is proceeding pro se, for a writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2254, challenging the 2006 decision by the California Board of Parole  
18 Hearings (BPH) finding him unsuitable for parole. Petitioner has now filed an application to  
19 proceed in forma pauperis which reveals that petitioner is unable to afford the costs of suit.

20 Accordingly, the application to proceed in forma pauperis will be granted. See 28  
21 U.S.C. § 1915(a). Since petitioner may be entitled to relief if the claimed violation of  
22 constitutional rights is proved, respondents will be directed to file a response to petitioner's  
23 habeas petition. However, on May 16, 2008, the Ninth Circuit granted rehearing en banc in  
24 Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008).

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

26 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

1           2. Respondents are directed to file a response to petitioner's habeas petition  
2 within sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An  
3 answer shall be accompanied by all transcripts and other documents relevant to the issues  
4 presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

5           3. If the response to the habeas petition is an answer, petitioner's reply, if any,  
6 shall be filed and served within thirty days after service of the answer;

7           4. If the response to the habeas petition is a motion, petitioner's opposition or  
8 statement of non-opposition to the motion shall be filed and served within thirty days after  
9 service of the motion, and respondents' reply, if any, shall be filed and served within fifteen days  
10 thereafter; and

11           5. The Clerk of the Court shall serve a copy of this order, *the*  
12 *consent/reassignment form contemplated by Appendix A(k) to the Local Rules of this court*  
13 together with a copy of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on  
14 Michael Patrick Farrell, Senior Assistant Attorney General.

15           6. Within twenty days of the date of this order, the parties shall show cause why  
16 this action should not be administratively stayed pending the Ninth Circuit's decision in Hayward  
17 v. Marshall, 512 F.3d 536 (9th Cir. 2008), *reh'g en banc granted*, \_\_\_ F.3d \_\_\_, No. 06-55392 (9th  
18 Cir. filed May 16, 2008).

19 DATED: February 3, 2009

21 /s/ Gregory G. Hollows

22 UNITED STATES MAGISTRATE JUDGE

23 GGH: AB  
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