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

10 MARIO INFANTE,

11 Petitioner,

No. CIV S-09-0251 EFB P

12 vs.

13 JOHN W. HAVILAND,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus.
17 See 28 U.S.C. § 2254. Petitioner seeks leave to proceed *in forma pauperis*. See 28 U.S.C.
18 § 1915(a).

19 Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford
20 the costs of suit.

21 A judge “entertaining an application for a writ of habeas corpus shall forthwith award the
22 writ or issue an order directing the respondent to show cause why the writ should not be granted,
23 unless it appears from the application that the applicant or person detained is not entitled
24 thereto.” 28 U.S.C. § 2243. It is not apparent from the face of the application that the petitioner
25 is not entitled to relief.

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1 Accordingly, it is hereby ordered that:

2 1. Petitioner's request for leave to proceed *in forma pauperis* is granted.

3 2. Respondent shall file and serve either an answer or a motion in response to
4 petitioner's application within 60 days from the date of this order. See Rule 4, Fed. R.
5 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other
6 documents relevant to the determination of the issues presented in the application. See Rules 4,
7 5, Fed. R. Governing § 2254 Cases.

8 3. Petitioner's reply, if any, shall be filed and served within 30 days of service of an
9 answer.

10 4. If the response to petitioner's application is a motion, petitioner's opposition or
11 statement of non-opposition shall be filed and served within 30 days of service of the motion,
12 and respondents' reply, if any, shall be filed within 15 days thereafter.

13 5. The Clerk of the Court shall serve a copy of this order together with a copy of
14 petitioner's January 28, 2009, petition for a writ of habeas corpus with any and all attachments
15 on Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The
16 Clerk of the Court also shall serve on the Senior Assistant Attorney General the consent form
17 used in this court.

18 Dated: September 8, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE