Doc. 8

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner's habeas petition.

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

- 1. The court's August 27, 2009 findings and recommendations are vacated;
- 2. Petitioner's application to proceed in forma pauperis (Doc. No. 7) is granted;
- 3. Respondent is directed to file a response to petitioner's habeas petition within sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;
- 4. If the response to the habeas petition is an answer, petitioner's reply, if any, shall be filed and served within thirty days after service of the answer;
- 5. If the response to the habeas petition is a motion, petitioner's opposition or statement of non-opposition to the motion shall be filed and served within thirty days after service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days thereafter; and
- 6. The Clerk of the Court shall serve a copy of this order, a copy of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a copy of the form regarding consent or request for reassignment on Michael Patrick Farrell, Senior Assistant Attorney General. DATED: September 11, 2009.

Dale A. Dage DALE A. DROZD

UNITED STATES MAGISTRATE JUDGE

DAD:9 brig1774.100