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

10 SAM CONSIGLIO, JR.,

11 Petitioner,

No. 2:13-cv-0157 GEB KJN P

12 vs.

13 CALIFORNIA BOARD OF PAROLE  
14 HEARINGS,

15 Respondent.

ORDER

16 \_\_\_\_\_/  
17 Petitioner, presently housed at Coalinga State Hospital, and proceeding without  
18 counsel, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together  
19 with an application to proceed in forma pauperis.<sup>1</sup>

20 Examination of the in forma pauperis application reveals that petitioner is unable  
21 to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be  
22 granted. See 28 U.S.C. § 1915(a).

23 In the petition, petitioner contends, *inter alia*, that the respondent denied  
24 petitioner his due process rights under Valdivia v. Wilson, No. 2:94-cv-0671 LKK (E.D. Cal.

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<sup>1</sup> On January 30, 2013, petitioner also paid the \$5.00 filing fee.

1 filed May 2, 1994),<sup>2</sup> during a series of parole revocation proceedings. (Dkt. No. 1 at 4.) During  
2 the alleged unlawful continued confinement, petitioner was committed to Coalinga State Hospital  
3 as a sexually violent predator. (Dkt. No. 1 at 10.)

4 On February 8, 2013, petitioner filed a motion to expedite the instant petition  
5 because it involves an allegedly unlawful parole violation, and because in 2008, petitioner's  
6 cardiologist allegedly informed petitioner that due to his poor heart condition, petitioner only had  
7 two to three years left to live. (Dkt. No. 10 at 2.) Petitioner included a release to enable the court  
8 to obtain medical records from his cardiologist to substantiate his claim.<sup>3</sup> However, petitioner is  
9 advised that it is petitioner's obligation to support his claims; the court is not authorized to obtain  
10 records on behalf of parties. While the court appreciates petitioner's desire to expedite this case,  
11 it takes time for the parties to obtain documents to present the court with a complete record.  
12 Plaintiff's motion is denied without prejudice.

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15 <sup>2</sup> On May 2, 1994, six individuals and the Prisoners' Rights Union filed a 42 U.S.C.  
16 § 1983 class action suit in the Eastern District of California against the State of California and  
17 various state officials. See Valdivia, No. 2:94-cv-0671 LKK. The plaintiffs in Valdivia alleged  
18 that they were denied legal counsel at their parole revocation hearings in violation of the  
19 Fourteenth Amendment. Id. On December 1, 1994, the district court certified a class consisting  
of: (1) California parolees at large; (2) California parolees in custody, as alleged parole violators;  
and (3) California parolees who are in custody, having been found in violation of parole and who  
have been sentenced to custody. Id., Dkt. No. 76.

20 On March 9, 2004, the district court entered a Stipulated Order for Permanent Injunctive  
21 Relief. Id. Dkt. No. 1034. The injunction requires the State of California and responsible  
22 officials to implement policies and procedures with respect to the parole revocation process,  
23 including: (1) the appointment of counsel; (2) setting a probable cause hearing within a specified  
24 amount of time; (3) a plan to provide hearing space for revocation hearings; (4) standards,  
guidelines and training for effective assistance of state appointed counsel; (5) access to evidence  
and the ability to subpoena and present witnesses and evidence to the same extent as the State;  
and (6) limitations on the use of hearsay evidence. Id. The court approved the settlement and  
final injunction on March 17, 2004 (id. at 1044), and continues to maintain jurisdiction over the  
settlement. Id.

25 <sup>3</sup> In the release, petitioner set forth his social security number, which is to be redacted  
26 from all court filings. E.D. L.R. 140(a)(iii). Accordingly, the Clerk of the Court is directed to  
redact petitioner's social security number from Dkt. No. 10 at 3; 6 at 3.

1 On February 4, 2013, petitioner filed a motion for a Valdivia parole revocation  
2 hearing. (Dkt. No. 6 at 1.) Petitioner's motion is based on the merits of his claim. Respondent  
3 has not yet been served, and the record is not yet fully developed. Thus, the court is not in a  
4 position to rule on the merits of the petition at this time. Petitioner's motion is denied.

5 Petitioner also sought appointment of counsel. In light of the complexity of the  
6 legal issues involved, the court has determined that the interests of justice require appointment of  
7 counsel. See 18 U.S.C. § 3006A(a)(2)(B); see also Weygandt v. Look, 718 F.2d 952, 954 (9th  
8 Cir. 1983).

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


- 10 1. Petitioner's motion to proceed in forma pauperis (dkt. #2) is granted;
- 11 2. The Clerk of the Court is directed to redact petitioner's social security number  
12 from Dkt. No. 10 at 3; 6 at 3;
- 13 3. Plaintiff's motions to expedite (dkt. no. 10) and for hearing (dkt. no. 6) are  
14 denied;
- 15 4. Plaintiff's motion for appointment of counsel (dkt. no. 6) is granted;
- 16 5. The Federal Defender is appointed to represent petitioner;
- 17 6. The Clerk of the Court is directed to serve a copy of the petition and this order  
18 on David Porter, Assistant Federal Defender;
- 19 7. Petitioner's counsel shall contact the Clerk's Office to make arrangements for  
20 copies of documents in the file;
- 21 8. A status conference is set for May 2, 2013, at 10:00 a.m. in Courtroom #25;
- 22 9. All parties shall appear at the status conference by counsel;
- 23 10. Fourteen days prior to the conference, the parties shall file and serve status  
24 reports which address the timing and order of the following matters:
  - 25 a. Discovery and investigations;
  - 26 b. Anticipated motions;

- 1 c. The need for and timing of an evidentiary hearing;  
2 d. Enumeration and resolution of unexhausted claims; and  
3 e. Possible future amendments to the pleadings.

4 The parties are advised that failure to timely file a status report may result in sanctions; and

5 11. The Clerk of the Court shall serve a copy of this order, the form Consent to  
6 Proceed Before a United States Magistrate Judge, and a copy of the petition for writ of habeas  
7 corpus pursuant to 28 U.S.C. § 2254 on Michael Patrick Farrell, Senior Assistant Attorney  
8 General.

9 DATED: February 15, 2013

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12 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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