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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 RAUL ESCARCEGA,

No. C 08-1203 SI (pr)

9 Petitioner,

**ORDER**

10 v.

11 BEN CURRY, warden,

12 Respondent.  
13 \_\_\_\_\_/


14 In this habeas action, petitioner has challenged a decision by the Board of Parole Hearings  
15 that found him not suitable for parole. The matter is now before the court for consideration of  
16 respondent's (a) request for a stay pending a decision in a particular parole-denial case pending  
17 in the Ninth Circuit that may resolve some or all of the issues in this case and (b) motion for an  
18 extension of time to respond to the petition until the court denies his motion for a stay or the  
19 Ninth Circuit's parole denial case is decided.

20 In Hayward v. Marshall, 9th Cir. Case No. 06-55392, the panel's published decision, 512  
21 F.3d 536 (9th Cir. 2008), was vacated when rehearing en banc was granted on May 16, 2008.  
22 The en banc oral argument took place on June 24, 2008, and the parties have finished their  
23 original briefing, as well as two supplemental rounds of briefing. Although it is likely that  
24 Hayward will provide guidance for analyzing parole denial cases, there is no set date for a  
25 decision in Hayward. Due to the absence of a set date for a decision in Hayward, the court will  
26 not stay this action pending a decision in Hayward. See Yong v. INS, 208 F.3d 1116, 1120-22  
27 (9th Cir. 2000) (it is an abuse of discretion for a district court to stay a habeas petition  
28 indefinitely pending resolution of a different case involving parallel issues on the basis of  
judicial economy). The motion for a stay is DENIED. (Docket # 6.)

1 Respondent's motion for an extension of time to file a response to the petition is  
2 GRANTED (Docket # 7). The court now sets the following briefing schedule: Respondent  
3 must file and serve his answer no later than **June 12, 2009**. Petitioner must file and serve his  
4 traverse no later than **July 24, 2009**.

5 IT IS SO ORDERED.

6 DATED: March 11, 2009

  
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SUSAN ILLSTON  
United States District Judge

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