

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS CARDIN,)	No. C 08-1847 JSW (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE
)	
vs.)	
)	
BEN CURRY, Warden,)	
)	
Respondent.)	
_____)	

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Correctional Training Facility in Soledad, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision by the California Board of Parole Hearings (“Board”) to deny Petitioner parole. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of second degree murder in Los Angeles County Superior Court, and, in 1981, the trial court sentenced him to a term of 15 years-to-life in state prison. In 2006, the Board found Petitioner unsuitable for parole. Petitioner challenged this decision unsuccessfully in a habeas petition filed in the superior court. Petitioner contends that he challenged the Board’s decision in the state supreme courts by petitions for a writ of habeas corpus.

1 **DISCUSSION**

2 I Standard of Review

3 This court may entertain a petition for a writ of habeas corpus “in behalf of a
4 person in custody pursuant to the judgment of a State court only on the ground that he is
5 in custody in violation of the Constitution or laws or treaties of the United States.” 28
6 U.S.C. § 2254(a).

7 It shall “award the writ or issue an order directing the respondent to show cause
8 why the writ should not be granted, unless it appears from the application that the
9 applicant or person detained is not entitled thereto.” *Id.* § 2243.

10 II Legal Claims

11 Petitioner alleges that the Board’s decision violated his right to due process
12 because the decision was not supported by evidence of his present dangerousness and
13 that it violates his plea agreement. Liberally construed, the allegations are sufficient to
14 warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369
15 (1987); *see, e.g., Morales. v. California Dep't of Corrections*, 16 F.3d 1001, 1005 (9th
16 Cir. 1994), *rev'd on other grounds*, 514 U.S. 499 (1995).

17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown,

19 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
20 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
21 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

22 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
23 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
24 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
25 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
26 portions of the state trial record that have been transcribed previously and that are relevant
27 to a determination of the issues presented by the petition. If Petitioner wishes to respond
28

1 to the answer, he shall do so by filing a traverse with the Court and serving it on
2 Respondent within **thirty (30)** days of his receipt of the answer.

3 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
4 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
5 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
6 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
7 days of receipt of the motion, and Respondent shall file with the Court and serve on
8 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

9 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
10 the Court informed of any change of address by filing a separate paper captioned "Notice
11 of Change of Address." He must comply with the Court's orders in a timely fashion.
12 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
13 to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15 DATED: October 1, 2008

16 
17 _____
18 JEFFREY S. WHITE
19 United States District Judge
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 LUIS CARDIN,
6 Plaintiff,
7

Case Number: CV08-01847 JSW

CERTIFICATE OF SERVICE

8 v.

9 BEN CURRY et al,
10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Luis Cardin
18 C35792
19 P.O. Box 689
20 Soledad, CA 93960-0689

Dated: October 1, 2008



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

21
22
23
24
25
26
27
28