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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 OSVALDO ELIAS,

No. C 08-2798 TEH (PR)

10 Petitioner,

ORDER TO SHOW CAUSE

11 vs.

12 ROBERT L. AYERS, JR., Warden,

13 Respondent.
14 _____/

15 Petitioner, a California state inmate incarcerated at San Quentin State Prison in
16 San Quentin, California, has filed a pro se petition for a writ of habeas corpus pursuant to
17 28 U.S.C. § 2254 challenging the August 7, 2007 decision of the California Board of
18 Parole Hearings (“BPH”) to deny him parole. Petitioner has paid the filing fee. This
19 order directs Respondent to show cause why the petition should not be granted.

20 **BACKGROUND**

21 According to the petition and the attachments thereto, Petitioner was convicted in
22 Alameda County Superior Court of second degree murder with a firearm and was
23 sentenced to a term of sixteen years-to-life in 1997. Petitioner challenges the BPH’s
24 decision finding him unsuitable for parole in 2007. According to the petition, Petitioner
25 exhausted his claims in the state courts, which were finally resolved by a petition for
26 review in the California Supreme Court, which denied review on April 23, 2008. The
27 petition was filed in this Court on June 4, 2008.
28

1 **DISCUSSION**

2 A. Standard of Review

3 The 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.” 28 U.S.C. § 2243.

10 B. Legal Claims

11 Petitioner seeks federal habeas corpus relief from the BPH’s decision finding him
12 unsuitable for parole. Liberally construed, Petitioner’s claims appear colorable under §
13 2254 and merit an answer from Respondent. See Hayward v. Marshall, 512 F.3d 536,
14 543 (9th Cir. 2008); Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (finding that
15 initial refusal to set parole date for prisoner with fifteen-to-life sentence implicated
16 prisoner’s liberty interest in release on parole which cannot be denied without adequate
17 procedural due process protections).

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown,

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

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

1 are relevant to a determination of the issues presented by the petition.

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

5 4. Petitioner is reminded that all communications with the Court must be
6 served on Respondent by mailing a true copy of the document to Respondent's counsel.
7 Petitioner must also keep the Court and all parties informed of any change of address.

8
9 SO ORDERED.

10 DATED: 01/08/09



THELTON E. HENDERSON
United States District Judge