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

JIMMY R. SOTO, V48518,)	
)	
Petitioner,)	No. C 11-4704 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
GREG D. LEWIS, Warden,)	(Docket # 3)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the retroactive application of changes in California Penal Code section 2933.6 to him. Effective January 25, 2010, section 2933.6 was changed to provide that validated gang members or associates are ineligible to earn credits off their sentence while housed in a Secured Housing Unit (SHU), Psychiatric Services Unit (PSU) or Administrative Segregation Unit (ASG).

Petitioner unsuccessfully sought relief from the state courts until the Supreme Court of California denied his final state petition on August 10, 2011.

Petitioner seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

1 **DISCUSSION**

2 A. Standard of Review

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

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

10 B. Claims

11 The Ex Post Facto Clause forbids the states from statutorily cancelling
12 time credits and making ineligible for early release any prisoner who was
13 previously eligible. See Lynce v. Mathis, 519 U.S. 433, 437-39, 447-49 (1997)
14 (retroactive cancellation of prison credits has impermissible effect of lengthening
15 period of incarceration in violation of Ex Post Facto Clause). Liberally
16 construed, petitioner's ex post facto claim appears cognizable under § 2254 and
17 merits an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020
18 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas
19 corpus liberally).

20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown,

22 1. Petitioner's request to proceed in forma pauperis (docket # 3) is
23 GRANTED.

24 2. The clerk shall serve a copy of this order and the petition and all
25 attachments thereto on respondent and respondent's attorney, the Attorney
26 General of the State of California. The clerk also shall serve a copy of this order
27

1 on petitioner.

2 3. Respondent shall file with the court and serve on petitioner, within
3 60 days of the issuance of this order, an answer conforming in all respects to Rule
4 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
5 habeas corpus should not be granted. Respondent shall file with the answer and
6 serve on petitioner a copy of all portions of the state trial record that have been
7 transcribed previously and that are relevant to a determination of the issues
8 presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a
10 traverse with the court and serving it on respondent within 30 days of his receipt
11 of the answer.

12 4. Respondent may file a motion to dismiss on procedural grounds in
13 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
14 Rules Governing Section 2254 Cases. If respondent files such a motion,
15 petitioner shall file with the court and serve on respondent an opposition or
16 statement of non-opposition within 30 days of receipt of the motion, and
17 respondent shall file with the court and serve on petitioner a reply within 15 days
18 of receipt of any opposition.

19 5. Petitioner is reminded that all communications with the court must
20 be served on respondent by mailing a true copy of the document to respondent's
21 counsel. Petitioner must also keep the court and all parties informed of any
22 change of address.

23 SO ORDERED.

24 DATED: Jan. 13, 2012

25 
26 _____
27 CHARLES R. BREYER
28 United States District Judge