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

HENRY C. MENDEZ,

Petitioner,

vs.

LEWIS, Warden,

Respondent.

) No. C 12-1342 JSW (PR)

) **ORDER TO SHOW CAUSE; DENYING**

) **APPOINTMENT OF COUNSEL**

) **(Docket No. 7)**

**INTRODUCTION**

Petitioner, a prisoner incarcerated at Pelican Bay State Prison who is proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the calculation of his release date by prison officials. This order directs Respondent to show cause why the petition should not be granted, and denies Petitioner’s motion for appointment of counsel.

**BACKGROUND**

In 1993, Petitioner was convicted in Los Angeles County Superior Court of robbery and other related offenses. The trial court sentenced him to a term of 37 years in state prison. The California Court of Appeal affirmed the judgment on appeal, and the California Supreme Court denied a petition for review. In 2011 and 2012, Petitioner filed unsuccessful habeas petitions in all three levels of the California courts raising the claim

1 raised here, namely that a new state law has changed his release date, in violation of his  
2 rights under the Ex Post Facto Clause of the constitution.

### 3 DISCUSSION

#### 4 I Standard of Review

5 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
6 person in custody pursuant to the judgment of a State court only on the ground that he is  
7 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
8 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to  
9 show cause why the writ should not be granted, unless it appears from the application that  
10 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

#### 11 II Legal Claims

12 As grounds for federal habeas relief, Petitioner claims that a new state law violates  
13 his constitutional rights under the Ex Post Facto Clause of the constitution because it has  
14 retroactively delayed the date he will be released from state prison. Liberally construed,  
15 this claim is sufficient to warrant a response from Respondent.

### 16 CONCLUSION

17 For the foregoing reasons and for good cause shown,

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

21 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**  
22 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
23 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
24 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all  
25 portions of the state trial record that have been transcribed previously and that are relevant  
26 to a determination of the issues presented by the petition. If Petitioner wishes to respond  
27 to the answer, he shall do so by filing a traverse with the Court and serving it on  
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1 Respondent within **thirty (30)** days of the date the answer is filed.


2 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on  
3 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to  
4 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,  
5 Petitioner shall file with the Court and serve on Respondent an opposition or statement of  
6 non-opposition within **thirty (30)** days of the date the motion is filed, and Respondent  
7 shall file with the Court and serve on Petitioner a reply within **fifteen (15)** days of the date  
8 any opposition is filed.

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 5. The motion for appointment of counsel (docket number 7) is DENIED for  
15 want of extraordinary circumstances or any apparent need for an evidentiary hearing at  
16 this time.

17 IT IS SO ORDERED.

18 DATED: April 26, 2012

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21 JEFFREY S. WHITE  
22 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 HENRY C MENDEZ,  
6  
7 Plaintiff,

Case Number: CV12-01342 JSW

**CERTIFICATE OF SERVICE**

8 v.


9 LEWIS, PBSP WARDEN 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 April 26, 2012, 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 Henry C. Mendez C-01966  
18 Pelican Bay State Prison  
19 P.O. Box 7500  
20 Crescent City, CA 95532-2500

21 Dated: April 26, 2012

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