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

CESAR ALFARO, E68257,)	
)	
Petitioner,)	No. C 12-1555 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
GREG D. LEWIS, Warden,)	
)	
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 review of his final state habeas petition on March 14, 2012.

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 Petitioner claims that the retroactive application of changes in section
12 2933.6 to him violate his plea agreement, and ex post facto and due process
13 principles. Liberally construed, petitioner's claims appear minimally cognizable
14 under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247
15 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for
16 writs of habeas corpus liberally); see also Lynce v. Mathis, 519 U.S. 433, 437-39,
17 447-49 (1997) (retroactive cancellation of prison credits has impermissible effect
18 of lengthening period of incarceration in violation of Ex Post Facto Clause).

19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown,

21 1. The clerk shall serve a copy of this order and the petition and all
22 attachments thereto on respondent and respondent's attorney, the Attorney
23 General of the State of California. The clerk also shall serve a copy of this order
24 on petitioner.

25 2. Respondent shall file with the court and serve on petitioner, within
26 60 days of the issuance of this order, an answer conforming in all respects to Rule
27

1 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
2 habeas corpus should not be granted. Respondent shall file with the answer and
3 serve on petitioner a copy of all portions of the state trial record that have been
4 transcribed previously and that are relevant to a determination of the issues
5 presented by the petition.

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

9 3. Respondent may file a motion to dismiss on procedural grounds in
10 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
11 Rules Governing Section 2254 Cases. If respondent files such a motion,
12 petitioner shall file with the court and serve on respondent an opposition or
13 statement of non-opposition within 28 days of receipt of the motion, and
14 respondent shall file with the court and serve on petitioner a reply within 14 days
15 of receipt of any opposition.

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

20 SO ORDERED.

21 DATED: June 19, 2012


22 CHARLES R. BREYER
23 United States District Judge