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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODGER BOX,
Plaintiff,
v.
PAUL MIOVAS, et al.,
Defendants.

Case No. [12-cv-04347-VC](#)

**ORDER LIFTING STAY AND ORDER
TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED**

On August 17, 2012, Plaintiff Rodger Box filed a complaint under 42 U.S.C. § 1983 against the City of Concord and employees or former employees of the Concord Police Department, based upon events that occurred during Box's arrest on August 21, 2010. Box was convicted of resisting arrest and appealed his conviction. On April 8, 2013, this case was stayed during the pendency of Box's appeal pursuant to a stipulation between the parties. *See* doc. no. 38. The parties argued that the stay was necessary because, under *Younger v. Harris*, 401 U.S. 37 (1971), a federal court is prevented from interfering with ongoing state criminal proceedings and, under *Heck v. Humphrey*, 512 U.S. 477, 486 (1994), a suit for damages on a civil rights claim concerning an allegedly unconstitutional conviction or imprisonment cannot be maintained absent proof "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus."

On August 26, 2014, Box filed a notice that the California Supreme Court had denied his petition for a writ of habeas corpus, but that he had mailed a second petition on August 21, 2014. *See* doc. no. 46.

Box's state court appeals and/or habeas actions appear to have been denied. Therefore, the

1 Court lifts the stay that was imposed on April 8, 2013 and orders the parties to show cause why
2 this case is not barred by *Heck v. Humphrey*.

3 **CONCLUSION**

4 Based on the foregoing, the Court orders as follows:

5 1. The Clerk of the Court is directed to lift the stay in this action that was imposed on April
6 8, 2013.

7 2. Within twenty-eight days from the date of this Order, Defendants shall file a brief
8 explaining whether the cases should be dismissed pursuant to *Heck v. Humphrey* or for any other
9 reason.

10 3. Box may file his response within twenty-eight days thereafter. Defendants shall file a
11 reply fourteen days after they are served with Box's opposition.

12 4. No hearing will be held on the order to show cause unless the Court so orders at a later
13 date.

14 5. All communications by Box with the Court must be served on Defendants, or
15 Defendants' counsel.

16 6. It is Box's responsibility to prosecute this case. Box must keep the Court informed of
17 any change of address by filing a separate paper with the clerk headed "Notice of Change of
18 Address," and must comply with the Court's orders in a timely fashion. Failure to do so may
19 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
20 Procedure 41(b).

21 7. Extensions of time are not favored, though reasonable extensions will be granted. Any
22 motion for an extension of time must be filed no later than ten days prior to the deadline sought to
23 be extended.

24 **IT IS SO ORDERED.**

25 Dated: September 30, 2014



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27 VINCE CHHABRIA
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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CERTIFICATE OF SERVICE


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

That on 9/30/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rodger Box
3905 Clayton Road #27
Concord, CA 94521

Dated: 9/30/2014

Richard W. Wieking
Clerk, United States District Court


By: _____
Kristen Melen, Deputy Clerk to the
Honorable VINCE CHHABRIA