

1 **DISCUSSION**

2 I Standard of Review

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

9 II Legal Claims

10 Petitioner claims that the decision to delay his next parole eligibility hearing,
11 pursuant to “Marsy’s Law” (Proposition 9) violates his rights under the Ex Post Facto
12 Clause. When liberally construed, Petitioner’s claim is sufficient to warrant a response
13 from Respondent.

14 **CONCLUSION**

15 For the foregoing reasons and for good cause shown,

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

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

NORTHERN DISTRICT OF CALIFORNIA

GUSTAVO RODARTE,
Plaintiff,

Case Number: CV12-05340 JSW

CERTIFICATE OF SERVICE

v.

M.E. SPEARMAN et al,
Defendant.

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 February 26, 2013, 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.

Gustavo Rodarte C-72196
P.O. Box 689-YW-312
Soledad, CA 93960

Dated: February 26, 2013


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