

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 DARIO L. CANNON,
5 Plaintiff,

6 v.

7 GERALD JANDA,
8 Defendant.

Case No. 13-cv-02419-TEH

ORDER TO SHOW CAUSE

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10 The Court is in receipt of Petitioner Dario Cannon's amended petition for a writ of
11 habeas corpus. Rule 15 of the Federal Rules of Civil Procedure applies to Petitioner's
12 amended petition, and Rule 15(b) instructs Courts to "freely give leave when justice so
13 requires." See Rule 12 of the Rules Governing §2254 Cases in the United States District
14 Courts, hereinafter "§2254 Rules" (authorizing application of Federal Rules of Civil
15 Procedure where not inconsistent with §2254 Rules). In applying Rule 15, courts are to
16 consider whether the amendment is futile, constitutes undue delay or bad faith, or would
17 cause prejudice to the opposing party. *Foman v. Davis*, 371 U.S. 178, 182 (1962)
18 (outlining reasons where Court may exercise discretion to deny leave to amend under Rule
19 15). Finding that Petitioner's amendment is not futile, does not constitute undue delay or
20 bad faith, nor would Respondent be prejudiced as Respondent has yet to file any
21 responsive pleading with respect to the original petition – the Court grants Petitioner leave
22 to file an amended petition.

23 Because it does not appear from the face of the petition that Petitioner is not entitled
24 to habeas relief, the Court hereby orders Respondent Gerald Janda "to show cause why the
25 writ should not be granted." 28 U.S.C. § 2243. Accordingly, IT IS HEREBY ORDERED
26 that:

27 1. The Clerk of the Court shall serve by certified mail a copy of this order on
28 Respondent's attorney, the Attorney General of the State of California.


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2. On or before **March 17, 2014**, Respondent shall file and serve an answer showing cause why this Court should not issue a writ of habeas corpus. Respondent's answer shall conform in all respects to Rule 5 of the § 2254 Rules. In addition, Respondent shall file and serve with his answer a copy of all portions of the administrative record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

3. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent on or before **April 16, 2014**.

IT IS SO ORDERED.

Dated: 1/16/14



THELTON E. HENDERSON
United States District Judge