

UNITED STATES DISTRICT COURT
For the Northern District of California

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UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

ROBERT VALENTINO HERNANDEZ,

No. 3:15-cv-01805 LB

Petitioner,

ORDER TO SHOW CAUSE

v.

[Re: ECF No. 1]

DAVE DAVEY, Warden,

Respondent.

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INTRODUCTION

Robert Valentino Hernandez, an inmate at California State Prison – Corcoran in Corcoran, California, filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Petition, ECF No. 1.) His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This order requires the respondent to respond to the petition.

STATEMENT

Mr. Hernandez was convicted in the Contra Costa County Superior Court of two counts of first degree murder with associated firearms and gang enhancements. He was sentenced to two consecutive terms of 15 years to life in state prison. Among the evidence introduced against him

1 was the testimony of Jason Treas, who had been in jail with Mr. Hernandez on two occasions and
2 who testified about what Mr. Hernandez told him while they were in jail together.

3 After he was convicted, Mr. Hernandez timely filed a direct appeal to the California Court of
4 Appeals, First District, which affirmed his convictions. Mr. Hernandez then timely filed a petition
5 for review with the California Supreme Court. The California Supreme Court denied his petition for
6 review on January 21, 2014.

7 On April 21, 2015, Mr. Hernandez filed the instant petition for writ of habeas corpus in this
8 court.

9 ANALYSIS

10 This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody
11 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the
12 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423
13 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing the respondent
14 to show cause why the writ should not be granted, unless it appears from the application that the
15 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

16 In his federal petition, Mr. Hernandez asserts that he is entitled to a writ of habeas corpus due to
17 a violation of his Sixth Amendment right to counsel under *Massiah v. United States*, 377 U.S. 201
18 (1964). The Supreme Court has held that the right to counsel under *Massiah* “guarantees the
19 accused, at least after the initiation of formal charges, the right to rely on counsel as a ‘medium’
20 between him and the State.” *Maine v. Moulton*, 474 U.S. 159, 176 (1985). Although “the Sixth
21 Amendment is not violated whenever—by luck or happenstance—the State obtains incriminating
22 statements from the accused after the right to counsel has attached,” the state may not knowingly
23 exploit an opportunity to confront an accused in the absence of counsel or intentionally create a
24 situation “likely to induce [him] to make incriminating statements without the assistance of
25 counsel.” *Id.*; *United States v. Henry*, 447 U.S. 264, 274 (1980). To prove a Sixth Amendment
26 *Massiah* violation based on the government’s use of an informant, a petitioner must show that the
27 informant was acting as a government agent and that he or she “deliberately elicited” incriminating
28 statements from the petitioner. *Massiah*, 377 U.S. at 206; *Henry*, 447 U.S. at 269-70.

1 Upon review of Mr. Hernandez's petition, the court cannot say that his claim is patently without
2 merit. Respondent must respond to it.

3 **CONCLUSION**

4 For the foregoing reasons,

5 1. The claim that Mr. Hernandez's Sixth Amendment right to counsel under *Massiah v. United*
6 *States*, 377 U.S. 201 (1964), was violated warrants a response.

7 2. The clerk shall serve by mail a copy of this order, the petition and all attachments thereto
8 upon Respondent and Respondent's attorney, the Attorney General of the State of California. The
9 clerk shall also serve a copy of this order on Mr. Hernandez.

10 3. The clerk also shall serve a copy of the "consent or declination to magistrate judge
11 jurisdiction" form upon respondent and respondent's attorney, the Attorney General of the State of
12 California.

13 4. Respondent must file and serve upon Mr. Hernandez, on or before **July 7, 2015**, an answer
14 conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why
15 a writ of habeas corpus should not be issued. Respondent must file with the answer a copy of all
16 portions of the court proceedings that have been previously transcribed and that are relevant to a
17 determination of the issues presented by the petition.

18 5. If Mr. Hernandez wishes to respond to the answer, he must do so by filing a traverse with the
19 court and serving it on Respondent on or before **August 6, 2015**.

20 **IT IS SO ORDERED.**

21 Dated: May 8, 2015

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24 LAUREL BEELER
25 United States Magistrate Judge
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