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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICARDO TORRES,
Plaintiff,
v.
SCOTT FRAUENHEIM,
Defendant.

Case No. [16-cv-06054-JCS](#)

ORDER TO SHOW CAUSE

I. INTRODUCTION

Petitioner Ricardo Torres seeks federal habeas relief under 28 U.S.C. § 2254 from his state convictions. The petition for such relief is here for review under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. Respondent Scott Frauenheim shall file a response to the petition on or before July 5, 2017.¹

II. BACKGROUND

Torres states in his petition that following a jury trial he was convicted of assault by means of force likely to produce great bodily injury, with special allegations that he personally inflicted great bodily injury and that the assault was a hate crime, and sentenced to nineteen years in state prison in 2013. On direct appeal in 2015, a California appellate court modified the judgment as to certain probation conditions but otherwise affirmed the conviction and sentence. *See* Pet. (dkt. 1) Ex. 1. Torres petitioned the Supreme Court of California for review, but that court denied his petition on July 22, 2015. *See id.* Ex. 2. Torres filed this habeas action on October 19, 2016.

III. ANALYSIS

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in

¹ Torres, the only party yet to appear in this action, has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c).

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A
3 district court considering an application for a writ of habeas corpus shall “award the writ or issue
4 an order directing the respondent to show cause why the writ should not be granted, unless it
5 appears from the application that the applicant or person detained is not entitled thereto.” 28
6 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are
7 vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*,
8 908 F.2d 490, 491 (9th Cir. 1990).

9 As grounds for federal habeas relief, Torres asserts that improper jury instructions violated
10 his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.
11 When liberally construed, these claims are cognizable in a federal habeas corpus action.

12 **IV. CONCLUSION**

13 1. The Clerk shall serve a copy of this order, the petition and all attachments thereto, and a
14 magistrate judge jurisdiction consent or declination form on Respondent and Respondent’s
15 counsel, the Attorney General for the State of California.

16 2. No later than July 5, 2017, Respondent shall file an answer conforming in all respects to
17 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
18 should not be granted based on Torres’s claims. Respondent shall file with the answer all portions
19 of the state trial record that previously have been transcribed and that are relevant to a
20 determination of the issues presented by the petition.

21 3. If Torres wishes to respond to the answer, he shall do so by filing a traverse with the
22 Court no later than August 4, 2017.

23 4. In lieu of an answer, Respondent may file, no later than July 5, 2017, a motion to
24 dismiss on procedural grounds, as set forth in the Advisory Committee Notes to Rule 4 of the
25 Rules Governing Section 2254 Cases. If Respondent files such a motion, Torres shall file an
26 opposition or statement of non-opposition within twenty-eight days of the date the motion is filed,
27 and Respondent shall file a reply within fourteen days of the date any opposition is filed.

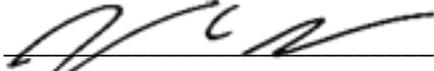
28 5. Upon a showing of good cause, requests for a reasonable extension of time will be

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granted provided they are filed on or before the deadline they seek to extend.

IT IS SO ORDERED.

Dated: April 5, 2017



JOSEPH C. SPERO
Chief Magistrate Judge