

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

ALBERTO CASTILLO MORALES,
Petitioner,
v.
JOE LIZARRAGA,
Respondent.

Case No. [17-cv-04005-LB](#)

ORDER TO SHOW CAUSE

Re: ECF Nos. 1, 2

INTRODUCTION

Alberto Castillo Morales, a prisoner housed at the Mule Creek State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He consented to proceed before a magistrate judge. (ECF No. 4.)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.

¹ Record citations refer to material in the Electronic Case File (“ECF”); pinpoint cites are to the ECF-generated page numbers at the top of the documents.

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STATEMENT

Mr. Morales provides the following information in his petition and attachments thereto: After a jury trial in Sonoma County Superior Court, Mr. Morales was convicted of making criminal threats and providing false identification, and was found to have suffered three prior strike convictions and one prior serious felony conviction. On October 29, 2014, Mr. Morales was sentenced to 30 years to life in prison.

He appealed. The California Court of Appeal affirmed Mr. Morales’ conviction and the California Supreme Court denied his petition for review in 2016.

ANALYSIS

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

The petition alleges two claims: (1) Mr. Morales’ federal right to due process was violated because the evidence was insufficient to support the conviction for making a criminal threat, and (2) Mr. Morales’ federal right to due process was violated when the trial court denied his motion for a new trial. Liberally construed, these claims are cognizable in a federal habeas action.

CONCLUSION

For the foregoing reasons,

1. The petition warrants a response.
2. The clerk shall serve by mail a copy of this order and the petition upon the respondent and the respondent's attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.
3. The clerk also shall serve a copy of the “consent or declination to magistrate judge jurisdiction” form upon the respondent and the respondent's attorney, the Attorney General of the State of California.

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4. The respondent must file and serve upon the petitioner, on or before **October 6, 2017**, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. The respondent must file with the answer a copy of all portions of the court proceedings that have been previously transcribed and that are relevant to a determination of the issues presented by the petitioner.

5. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on the respondent on or before **November 3, 2017**.

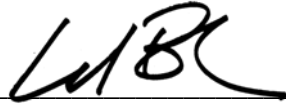
6. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep the court informed of any change of address and must comply with the court's orders in a timely fashion.

7. The petitioner is cautioned that he must include the case name and case number for this case on the first page of any document he submits to the court for consideration in this case.

8. The petitioner's *in forma pauperis* application is GRANTED. (ECF No. 2.)

IT IS SO ORDERED.

Dated: August 4, 2017



LAUREL BEELER
United States Magistrate Judge