

1  
2  
3  
4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6

7 CLIFFORD L. PARKER,

No. C 07-04215 SBA (PR)

8 Petitioner,

**ORDER DENYING STAY PENDING  
ISSUANCE OF MANDATE IN  
HAYWARD v. MARSHALL; SETTING  
NEW BRIEFING SCHEDULE**

9 v.

10 BEN CURRY, Warden,

11 Respondent.  
12 \_\_\_\_\_/

13 Petitioner, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28  
14 U.S.C. § 2254 challenging the denial of parole by the California Board of Parole Hearings. The  
15 Court issued an order to show cause.

16 On May 16, 2008, the Ninth Circuit granted en banc review in Hayward v. Marshall.  
17 Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008), reh'g en banc granted, No. 06-55392, slip op.  
18 5923 (9th Cir. May 16, 2008). The issues in Hayward include whether: (1) the district court must  
19 issue a Certificate of Appealability for the Ninth Circuit to have appellate jurisdiction; (2) prisoners  
20 have a constitutionally protected liberty interest in parole; and (3) if a liberty interest is created, what  
21 process is due under clearly established Supreme Court authority. (Hayward Resp't Brief at 1.)

22 Before the Court is Respondent's motion to stay proceedings until the mandate in Hayward is  
23 issued.

24 Habeas proceedings "implicate special considerations that place unique limits on a district  
25 court's authority to stay a case in the interests of judicial economy." INS v. Yong, 208 F.3d 1116,  
26 1120 (9th Cir. 2000). "A long stay . . . threatens to create the perception that courts are more  
27 concerned with efficient trial management than with the vindication of constitutional rights." Id.  
28

1 Oral argument was heard in Hayward on June 24, 2008. Subsequently, on July 10, 2008,  
2 Ninth Circuit Chief Judge Alex Kozinski directed the parties to file supplemental briefing by July  
3 18, 2008 in light of "the Court's decision to rehear this case en banc pursuant to Circuit Rule 35-3,  
4 and the discussion and apparent non-objection of the parties at oral argument that [the Court] should  
5 vacate and defer submission pending the California Supreme Court's decisions in In re Lawrence,  
6 No. S154018 (Cal. argued June 4, 2008), and In re Shaputis, No. S155872 (Cal. argued June 4,  
7 2008) . . . ." (Hayward July 10, 2008 Order at 1.) On August 21, 2008, the California Supreme  
8 Court issued decisions in In re Lawrence and In re Shaputis. Recently, the Ninth Circuit directed the  
9 appellant in Hayward to file supplemental briefing by October 8, 2008 addressing the application of  
10 these two California Supreme Court decisions to Hayward. The appellee in Hayward was directed  
11 to file a reply brief by October 29, 2008. In light of the procedural posture of the Hayward appeal,  
12 the Court finds that the estimated time frame for the Ninth Circuit's issuance of a mandate in  
13 Hayward is too indefinite to warrant a stay of the proceedings in this matter.

14 Accordingly, the request for a stay is hereby DENIED.

15 Within **thirty (30) days** Respondent shall file with this Court and serve upon Petitioner an  
16 Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing  
17 cause why a writ of habeas corpus should not be issued. Respondent shall file with the Answer a  
18 copy of all portions of the relevant state records that have been transcribed previously and that are  
19 relevant to a determination of the issues presented by the petition.

20 If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with the  
21 Court and serving it on Respondent within **thirty (30) days** of his receipt of the Answer. Should  
22 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **thirty (30) days**  
23 after the date Petitioner is served with Respondent's Answer.

24 Respondent may file a motion to dismiss on procedural grounds in lieu of an Answer, as set  
25 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If  
26 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an  
27 opposition or statement of non-opposition to the motion within **thirty (30) days** of receipt of the  
28

1 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**  
2 **days** of receipt of any opposition.

3 It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court and  
4 Respondent informed of any change of address and must comply with the Court's orders in a timely  
5 fashion. Petitioner must also serve on Respondent's counsel all communications with the Court by  
6 mailing a true copy of the document to Respondent's counsel.

7 Extensions of time are not favored, though reasonable extensions will be granted. Any  
8 motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline sought  
9 to be extended.

10 This Order terminates Docket no. 7.

11 IT IS SO ORDERED.

12 DATED: 9/18/08

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4  
5  
6 CLIFFORD L PARKER,  
7 Plaintiff,

Case Number: CV07-04215 SBA

**CERTIFICATE OF SERVICE**

8 v.

9 BEN CURRY et al,

10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on September 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

16  
17  
18 Clifford Lelikona Parker J-43369  
California State Prison - San Quentin  
19 San Quentin, CA 94974

20 Dated: September 22, 2008

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk