

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

3
4 PAUL ALBERT GUARDADO,

No. C 08-03268 CW (PR)

5 Petitioner,

ORDER DENYING STAY PENDING
ISSUANCE OF MANDATE IN HAYWARD v.
6 MARSHALL

7 v.

J. DAVIS, et al.,

(Docket no. 9)

8 Respondents.
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10 On July 7, 2008, Petitioner Paul Albert Guardado, a state
11 prisoner, filed a petition for a writ of habeas corpus pursuant to
12 28 U.S.C. § 2254 challenging the September 25, 2007 denial of
13 parole by the California Board of Parole Hearings (Board).¹ On
14 November 12, 2008, the Court issued an order to show cause.

15 On May 16, 2008, the Ninth Circuit granted en banc review in
16 Hayward v. Marshall. Hayward v. Marshall, 512 F.3d 536 (9th Cir.
17 2008), reh'g en banc granted, No. 06-55392, slip op. 5923 (9th Cir.
18 May 16, 2008). The issues in Hayward include whether: (1) the
19 district court must issue a Certificate of Appealability for the
20 Ninth Circuit to have appellate jurisdiction; (2) prisoners have a
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23 ¹Petitioner previously filed four separate federal habeas
24 corpus petitions challenging the 2002, 2003, 2004 and 2006 denials
25 of parole by the Board which were consolidated into case number
26 C 05-00194 CW. On April 9, 2008, the Court issued an Order
27 Granting Petition for Writ of Habeas Corpus in case C 05-00194 CW
28 and remanded to the Board to hold a new hearing and to re-evaluate
Petitioner's suitability for parole in accordance with the Order.
On August 12, 2008, the Board issued its decision and again found
Petitioner not suitable for parole. Petitioner filed an
application for an order enforcing the Court's April 9, 2008 Order.
On January 22, 2009, the Court issued an Order Granting
Petitioner's application and remanded to the Board to submit its
decision along with the Court's orders to the Governor for his
review.

1 constitutionally protected liberty interest in parole; and (3) if a
2 liberty interest is created, what process is due under clearly
3 established Supreme Court authority. (Hayward Resp't Brief at 1.)

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

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

12 Id.

13 Oral argument was heard in Hayward on June 24, 2008.
14 Subsequently, on July 10, 2008, Ninth Circuit Chief Judge Alex
15 Kozinski directed the parties to file supplemental briefing by July
16 18, 2008 in light of "the Court's decision to rehear this case en
17 banc pursuant to Circuit Rule 35-3, and the discussion and apparent
18 non-objection of the parties at oral argument that [the Court]
19 should vacate and defer submission pending the California Supreme
20 Court's decisions in In re Lawrence, No. S154018 (Cal. argued June
21 4, 2008), and In re Shaputis, No. S155872 (Cal. argued June 4,
22 2008)" (Hayward July 10, 2008 Order at 1.) On August 21,
23 2008, the California Supreme Court issued decisions in In re
24 Lawrence and In re Shaputis. Recently, the Ninth Circuit directed
25 the appellant in Hayward to file supplemental briefing by October
26 8, 2008 addressing the application of these two California Supreme

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1 Court decisions to Hayward. The appellee in Hayward was directed
2 to file a reply brief by October 29, 2008.

3 Respondent asserts that a stay is warranted on the basis of
4 judicial economy because "the resolution in Hayward could
5 significantly impact this case" (Mot. for Stay at 2.) It
6 is an abuse of discretion for a district court to stay a habeas
7 petition indefinitely pending resolution of a different case
8 involving parallel issues on the basis of judicial economy and to
9 prevent an intra-district split in decisions. Yong, 208 F.3d at
10 1120-22.

11 Accordingly, the request for a stay (docket no. 9) pending
12 issuance of the mandate in Hayward is hereby DENIED. However,
13 because the Court has ordered the Board in C-05-00194 to submit its
14 decision to the Governor along with this Court's order granting a
15 writ of habeas corpus, the Court will delay the answer in this
16 case.

17 Within one hundred eighty (180) days Respondents shall file
18 with this Court and serve upon Petitioner and Petitioner's counsel
19 an Answer conforming in all respects to Rule 5 of the Rules
20 Governing Section 2254 Cases, showing cause why a writ of habeas
21 corpus should not be issued. Respondents shall file with the
22 Answer a copy of all portions of the relevant state records that
23 have been transcribed previously and that are relevant to a
24 determination of the issues presented by the petition.

25 If Petitioner wishes to respond to the Answer, he shall do so
26 by filing a Traverse with the Court and serving it on Respondents
27 within thirty (30) days of his receipt of the Answer. Should
28 Petitioner fail to do so, the petition will be deemed submitted and

1 ready for decision thirty (30) days after the date Petitioner is
2 served with Respondents' Answer.

3 Respondents may file a motion to dismiss on procedural grounds
4 in lieu of an Answer, as set forth in the Advisory Committee Notes
5 to Rule 4 of the Rules Governing Section 2254 Cases. If
6 Respondents file such a motion, Petitioner shall file with the
7 Court and serve on Respondents an opposition or statement of non-
8 opposition to the motion within thirty (30) days of receipt of the
9 motion, and Respondents shall file with the Court and serve on
10 Petitioner a reply within fifteen (15) days of receipt of any
11 opposition.

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

16 This Order terminates Docket no. 9.

17 IT IS SO ORDERED.



18 DATED: 2/3/09

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20 CLAUDIA WILKEN
21 United States District Judge
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