

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

TODD ASHKER and DANNY TROXELL,  
  
                    Plaintiffs,  
  
          v.  
  
ARNOLD SCHWARZENEGGER, et al.,  
  
                    Defendants.

No. 09-05796 CW  
  
ORDER GRANTING  
PLAINTIFFS'  
REQUESTS FOR  
RECONSIDERATION  
AND FOR EXTENSION  
OF TIME TO FILE  
FIRST AMENDED  
COMPLAINT

On December 9, 2009, Plaintiffs Todd Ashker and Danny Troxell, inmates in the Secured Housing Unit (SHU) at Pelican Bay State Prison (PBSP), filed a complaint alleging various civil rights violations committed by state Defendants. On February 16, 2010, the Court issued an Order Screening Complaint Pursuant to 28 U.S.C. § 1915A in which it dismissed certain claims without leave to amend and other claims with leave to amend. On April 12, 2010, Plaintiffs filed a motion for leave to move for reconsideration of portions of the February 16, 2010 Order dismissing certain claims without leave to amend. Their request for leave to file a motion for reconsideration is granted and is construed as their motion for reconsideration. Because the complaint has not yet been served, the Court will not call for a response from the named Defendants. Having considered all the papers filed by Plaintiffs, the Court grants, in part, the motion for reconsideration.

On April 14, 2010, Plaintiffs filed a motion for an extension of time to file their First Amended Complaint (FAC). The Court

1 grants the motion for an extension of time to file the FAC.

2 DISCUSSION

3 I. Claims Regarding Parole Procedures

4 In the February 16, 2010 Order, the Court dismissed  
5 Plaintiffs' constitutional claims regarding parole procedures, and  
6 did not grant leave to amend because these claims had been  
7 adjudicated in Plaintiffs' previous case, C 05-3286 CW. In that  
8 case, Mr. Troxell's claims were dismissed for lack of exhaustion  
9 and Mr. Ashker's claims were dismissed on the ground that they  
10 sought an earlier release date and therefore must be brought in a  
11 habeas petition. However, as Plaintiffs point out, in case C 05-  
12 3286 CW, the Court granted Mr. Ashker's motion for reconsideration  
13 based on his clarification that he was not seeking an earlier  
14 release date, but rather prospective injunctive relief enjoining  
15 the Board of Parole Hearings (BPH) from using allegedly  
16 unconstitutional guidelines at his next parole hearing. Also,  
17 Plaintiffs correctly point out that in case C 05-3286 CW, the only  
18 claim at issue was Mr. Ashker's due process claim based on the  
19 BPH's August 7, 2003 hearing.

20 Plaintiffs state that they are alleging claims in this  
21 complaint based upon Mr. Troxell's 2006 and 2009 hearings before  
22 the BPH and Mr. Ashker's 2008 hearing before the BPH that were not  
23 before the Court in C 05-3286 CW. To the extent that Plaintiffs'  
24 claims regarding parole denials have not been litigated in  
25 C 05-3286 CW and do not seek an earlier release date, they are  
26 cognizable in this case. They are dismissed with leave to amend to  
27 remedy the deficiencies indicated in the February 16, 2010 Order.

1 See February 16, 2010 Order at 7-8.

2 II. Due Process Claims Based on Gang Validation Procedures

3 In the February 16, 2010 Order, the Court dismissed  
4 Plaintiffs' constitutional claims regarding gang validation, and  
5 did not grant leave to amend because these claims had been  
6 adjudicated in C 05-3286 CW. Plaintiffs point out that in  
7 C 05-3286 CW, at issue was Mr. Ashker's due process claim based  
8 upon the 2001 review of his status as a gang member and his 2002  
9 and 2003 revalidations as a gang member. Plaintiffs state that  
10 they are alleging claims in this complaint based upon their 2007  
11 and 2008 gang status reviews and revalidations. Therefore, to the  
12 extent that Plaintiffs' claims regarding gang status reviews and  
13 revalidations have not been litigated in C 05-3286 CW, they are  
14 cognizable in this case. The Court grants leave to amend them to  
15 remedy the deficiencies indicated in the February 16, 2010 Order.  
16 See February 16, 2010 Order at 7-8.

17 CONCLUSION

18 Based upon the foregoing, the Court grants Plaintiffs' request  
19 for an extension of time to file their FAC and their motion for  
20 reconsideration. Plaintiffs' FAC is due no later than forty-five  
21 days from the date of this Order.

22  
23 IT IS SO ORDERED.

24  
25 Dated: May 28, 2010



26 \_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

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

4 TODD ASHKER et al,

5 Plaintiff,

6 v.

7 ARNOLD SCHWARZENEGGER et al,

8 Defendant.

Case Number: CV09-05796 CW

**CERTIFICATE OF SERVICE**

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

11 That on May 28, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)  
12 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in  
13 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's  
14 office.

15 Danny Troxell  
16 Pelican Bay State Prison  
17 B76578  
18 P.O. Box 7500  
19 D1-120  
20 Crescent City, CA 95532

21 Todd Ashker C58191  
22 Pelican Bay State Prison  
23 P.O. Box 7500  
24 D1-SHU  
25 Crescent City, CA 95532

26 Dated: May 28, 2010

27 Richard W. Winking, Clerk  
28 By: Ronnie Hersler, Administrative Law Clerk