

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

LEO SCHWARTZENBERGER,
Petitioner,

No. C 10-00858 SBA (PR)

ORDER TO SHOW CAUSE

v.

FERNANDO GONZALES, Acting Warden,
Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee. It does not appear from the face of the petition that it is without merit. Good cause appearing, the Court hereby issues the following orders:

1. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.
2. Respondent shall file with this Court and serve upon Petitioner, within **one-hundred and twenty (120) days** of the issuance of this Order, 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. Respondent shall file with the Answer a copy of all portions of the relevant state records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

1 3. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with
2 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should
3 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**
4 after the date Petitioner is served with Respondent's Answer.

5 4. Respondent may file with this Court and serve upon Petitioner, within **sixty (60) days**
6 of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an Answer, as set
7 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
8 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an
9 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the
10 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**
11 **days** of receipt of any opposition.

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

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

19 IT IS SO ORDERED.

20 DATED: 7/29/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

21
22
23
24
25
26
27
28

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

4
5
6 LEO SCHWARTZENBERGER,
7 Plaintiff,

Case Number: CV10-01137 SBA

CERTIFICATE OF SERVICE

8 v.

9 F GONZALES 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 July 30, 2010, 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 Leo Schwartzenberger V-62320
18 California Correctional Institution
19 P.O. Box 608
Tehachapi, CA 93581

20 Dated: July 30, 2010

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

21
22
23
24
25
26
27
28