

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

4 ONESIMO GARCIA,

No. C 10-02050 SBA (PR)

5 Petitioner,

**ORDER DIRECTING RESPONDENT TO  
SHOW CAUSE WHY THE AMENDED  
PETITION SHOULD NOT BE  
GRANTED; AND SETTING BRIEFING  
SCHEDULE**

6 v.

7 J. ADAMS, Warden,

8 Respondent.  
9 \_\_\_\_\_/

10 On August 25, 2010, the Court issued an Order for Petitioner to Show Cause. The Order  
11 required Petitioner to file a notice in which he stated whether he elected to: (1) dismiss the petition  
12 with the goal of exhausting and then filing a new petition containing all claims; or (2) amend to  
13 delete the unexhausted claims and proceed with the exhausted one; or (3) ask for a stay to allow  
14 exhaustion. On November 4, 2010, Petitioner filed a document entitled "Show of Cause" along with  
15 an Amended Petition in which he elected to dismiss his unexhausted claims and proceed only with  
16 his exhausted claim (claim one). Accordingly, Petitioner's claims two and three are DISMISSED  
17 from this action.

18 In light of the dismissal of the two unexhausted claims, the petition appears to contain only  
19 one exhausted claim which should be addressed on its merits. It does not appear from the face of the  
20 amended petition that it is without merit. Good cause appearing, the Court hereby issues the  
21 following orders:

- 22 1. Petitioner's claims two and three are DISMISSED from this action.
- 23 2. The Clerk of the Court shall serve a copy of this Order and the amended petition and  
24 all attachments thereto (docket no. 11) upon Respondent and Respondent's attorney, the Attorney  
25 General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at  
26 his current address.
- 27  
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1           3.       Respondent shall file with this Court and serve upon Petitioner, within **sixty (60)**  
2 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules  
3 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.  
4 Respondent shall file with the Answer a copy of all portions of the relevant state records that have  
5 been transcribed previously and that are relevant to a determination of the issues presented by the  
6 petition.

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

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

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

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

25               IT IS SO ORDERED.

26 DATED: 11/16/10

  
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE

28

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

4 ONESIMO GARCIA,

5 Plaintiff,

6 v.

7 J ADAMS et al,

8 Defendant.

Case Number: CV10-02050 SBA

**CERTIFICATE OF SERVICE**

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

11 That on November 18, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Onesimo Garcia F-86310  
16 Pelican Bay State Prison  
17 PO Box 7500  
18 Crescent City, CA 95532

19 Dated: November 18, 2010

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