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

VICENTE F. LOPEZ,

No. C 10-04734 CW (PR)

Petitioner,

ORDER GRANTING IN FORMA
PAUPERIS STATUS; DIRECTING
RESPONDENT TO SHOW CAUSE WHY
THE PETITION SHOULD NOT BE
GRANTED; AND DENYING REQUEST
FOR APPOINTMENT OF COUNSEL

v.

GREG LEWIS, 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 also seeks leave to proceed in forma pauperis. 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. Petitioner's application to proceed in forma pauperis is GRANTED.

2. 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.¹ The Clerk shall also serve a copy of this Order on Petitioner at his current address.

3. Respondent shall file with this Court and serve upon Petitioner, within one-hundred 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

¹ Greg Lewis, the current acting warden of the prison where Petitioner is incarcerated, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1 have been transcribed previously and that are relevant to a
2 determination of the issues presented by the petition.

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

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

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

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

8. Petitioner has requested the appointment of counsel. The
Sixth Amendment's right to counsel does not apply in habeas corpus

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actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986) (unless an evidentiary hearing is required, the decision to appoint counsel in habeas corpus proceedings is within the discretion of the district court). Petitioner clearly presented his claims for relief in the petition and an order to show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no background in law, denial of appointment of counsel within discretion of district court where petitioner clearly presented issues in petition and accompanying memorandum). The Court will appoint counsel on its own motion if an evidentiary hearing is later required. See Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary hearing is required). For these reasons, Petitioner's request for the appointment of counsel is DENIED.

9. This Order terminates Docket nos. 2 and 3.

IT IS SO ORDERED.

Dated: 1/10/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 VICENTE F. LOPEZ,
5 Plaintiff,

Case Number: CV10-04734 CW

CERTIFICATE OF SERVICE

6 v.

7 FRANCISCO JACQUEZ et al,
8 Defendant.

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 January 10, 2011, 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
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Vicente Francisco Lopez V-06465
16 Pelican Bay State Prison
17 P.O. Box 7500
18 Crescent City, CA 95532

19 Dated: January 10, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk

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United States District Court
For the Northern District of California