

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

3  
4 RAUL MATA,

5                                    Petitioner,

6                                    v.

7 CONNIE GIPSON, Warden,

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

No. C 12-5852 CW (PR)

ORDER TO SHOW CAUSE,  
GRANTING LEAVE TO  
PROCEED IN FORMA  
PAUPERIS AND DENYING  
WITHOUT PREJUDICE  
MOTIONS FOR EQUITABLE  
TOLLING AND APPOINTMENT  
OF COUNSEL

(Docket nos. 3, 4, 10,  
11)

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11                                    Petitioner, a state prisoner, has filed this pro se petition  
12 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254,  
13 challenging his conviction. He seeks leave to proceed in forma  
14 pauperis. It does not appear from the face of the petition that  
15 it is without merit. Good cause appearing, the Court hereby  
16 issues the following orders:

17                                    1. Leave to proceed in forma pauperis is GRANTED.

18                                    2. Petitioner's motion for equitable tolling of the  
19 one-year statute of limitations for filing a federal habeas corpus  
20 petition is DENIED as premature. If Respondent moves to dismiss  
21 the petition as untimely, Petitioner can assert his arguments in  
22 opposition to such motion.

23                                    3. Petitioner's motion for the appointment of counsel is  
24 DENIED as premature. At this early stage of the proceedings, the  
25 Court is not in a position to determine whether the interests of  
26 justice require the appointment of counsel, see 18 U.S.C.  
27 § 3006A(a)(2)(B), or if counsel will be required for an  
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1 evidentiary hearing, see Rule 8 of the Rules Governing Section  
2 2254 Cases. Should the circumstances change materially at a later  
3 stage of the litigation, the Court will reconsider this decision  
4 on its own initiative.

5 4. The Clerk of the Court shall serve a copy of this Order  
6 and the petition and all attachments thereto upon Respondent and  
7 Respondent's attorney, the Attorney General of the State of  
8 California. The Clerk shall also serve a copy of this Order on  
9 Petitioner at his current address.

10 5. No later than sixty days from the date of this Order,  
11 Respondent shall file with this Court and serve upon Petitioner an  
12 Answer conforming in all respects to Rule 5 of the Rules Governing  
13 Section 2254 Cases, showing cause why a writ of habeas corpus  
14 should not be issued. Respondent shall file with the Answer all  
15 portions of the state record that have been transcribed previously  
16 and are relevant to a determination of the issues presented by the  
17 petition.

18 If Petitioner wishes to respond to the Answer, he shall do so  
19 by filing a Traverse with the Court and serving it on Respondent  
20 no later than thirty days from his receipt of the Answer. If he  
21 does not do so, the petition will be deemed submitted and ready  
22 for decision on the date the Traverse is due.

23 6. No later than sixty days from the date of this Order,  
24 Respondent may file with this Court and serve upon Petitioner a  
25 motion to dismiss on procedural grounds in lieu of an Answer, as  
26 set forth in the Advisory Committee Notes to Rule 4 of the Rules  
27 Governing Section 2254 Cases.

28 If Respondent files such a motion, Petitioner shall file with

1 the Court and serve on Respondent an opposition or statement of  
2 non-opposition to the motion within twenty-eight days of receipt  
3 of the motion, and Respondent shall file with the Court and serve  
4 on Petitioner a reply within fourteen days of receipt of an  
5 opposition.

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

12 8. 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 days prior to the deadline sought  
15 to be extended.

16 This Order terminates Dockets nos. 3, 4, 10 and 11.

17 IT IS SO ORDERED.

18 Dated: 3/8/2013

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20 CLAUDIA WILKEN  
21 UNITED STATES DISTRICT JUDGE  
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