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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RINCON,
Petitioner,
v.
M. E. SPEARMAN, Warden,
Respondent.

Case No. [15-cv-03779-DMR](#) (PR)

ORDER GRANTING *IN FORMA PAUPERIS* STATUS AND DIRECTING RESPONDENT TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE GRANTED

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He seeks federal habeas relief from his gang validation. He has also filed a motion for leave to proceed *in forma pauperis*. This action has been assigned to the undersigned Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

On August 18, 2015, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 1 at 7.

It does not appear from the face of the petition that it is without merit. However, the petition may be untimely. Petitioner was validated as a prison gang associate in 2012 (Dkt. 1 at 9), but the instant petition was not filed until 2015. Respondent is directed to consider first whether a motion to dismiss on grounds of untimeliness is the most appropriate first response to the petition. If Respondent so concludes, he may file a motion to dismiss as directed below, though he is not required to do so.

Good cause appearing, the court hereby issues the following orders:

1. Petitioner’s application to proceed *in forma pauperis* is GRANTED.

1 2. The Clerk of the Court shall serve a Magistrate Judge jurisdiction consent form, a
2 copy of this Order, as well as the petition and all attachments thereto upon Respondent and
3 Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve
4 a copy of this Order on Petitioner at his current address.

5 3. Within **twenty-eight (28) days** of the issuance of this Order, Respondent shall
6 complete and file the Magistrate Judge jurisdiction consent form to indicate whether he consents
7 or declines to proceed before the assigned Magistrate Judge. Respondent is free to withhold
8 consent without adverse consequences. If Respondent consents to a Magistrate Judge's
9 jurisdiction, this case will be handled by the undersigned Magistrate Judge. If Respondent
10 declines, the case will be reassigned to a District Judge. Whether Respondent consents or declines
11 to proceed before the assigned Magistrate Judge, the parties shall abide by the briefing schedule
12 below.

13 4. Respondent shall file with this court and serve upon Petitioner, within **sixty (60)**
14 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules
15 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.
16 Respondent shall file with the Answer a copy of all portions of the relevant state records that have
17 been transcribed previously and that are relevant to a determination of the issues presented by the
18 petition.

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

23 6. Respondent may file with this court and serve upon Petitioner, within **sixty (60)**
24 **days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an
25 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
26 2254 Cases. If Respondent files a motion to dismiss, Petitioner shall file with the court and serve
27 on Respondent an opposition or statement of non-opposition to the motion within **sixty (60) days**
28 of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply

1 within **fourteen (14) days** of receipt of any opposition.

2 7. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the
3 court and Respondent informed of any change of address and must comply with the court's orders
4 in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se*
5 whose address changes while an action is pending must promptly file a notice of change of
6 address specifying the new address. *See* L.R. 3-11(a). The court may dismiss a *pro se* action
7 without prejudice when: (1) mail directed to the *pro se* party by the court has been returned to the
8 court as not deliverable, and (2) the court fails to receive within sixty days of this return a written
9 communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b); *see also*
10 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

11 Petitioner must also serve on Respondent's counsel all communications with the court by
12 mailing a true copy of the document to Respondent's counsel.

13 8. Extensions of time are not favored, though reasonable extensions will be granted.
14 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the
15 deadline sought to be extended.

16 9. This Order terminates Docket No. 3.

17 IT IS SO ORDERED.

18 Dated: November 2, 2015



DONNA M. RYU
United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JOSE RINCON,
4 Plaintiff,
5 v.
6 M.E. SPEARMAN,
7 Defendant.
8

Case No. [4:15-cv-03779-DMR](#)

CERTIFICATE OF SERVICE

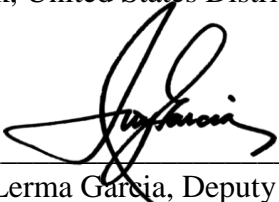
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11 That on November 2, 2015, I SERVED a true and correct copy(ies) of the attached, by
12 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing 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

16 Jose Rincon ID: K-02465
17 CTF-Central/CW-334-Low
18 P.O. Box 689
19 Soledad, CA 93960

20 Dated: November 2, 2015

21 Susan Y. Soong
22 Clerk, United States District Court

23
24 By: 
25 Ivy Lerma Garcia, Deputy Clerk to the
26 Honorable DONNA M. RYU
27
28

United States District Court
Northern District of California