

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK STEWART,  
Petitioner,  
  
v.  
  
WILLIAM MUNIZ, Warden,<sup>1</sup>  
Respondent.

Case No. [17-cv-01406-DMR](#) (PR)

**ORDER 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. Petitioner has paid the full filing fee. 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 March 15, 2017, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 4.

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 Magistrate Judge jurisdiction consent form, a copy of this Order, as well as 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 Petitioner’s current address.

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<sup>1</sup> William Muniz, the current 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           2.       Within **twenty-eight (28) days** of the issuance of this Order, Respondent shall  
2 complete and file the Magistrate Judge jurisdiction consent form to indicate whether Respondent  
3 consents or declines to proceed before the assigned Magistrate Judge. Respondent is free to  
4 withhold consent without adverse consequences. If Respondent consents to a Magistrate Judge’s  
5 jurisdiction, this case will be handled by the undersigned Magistrate Judge. If Respondent  
6 declines, the case will be reassigned to a District Judge. Whether Respondent consents or declines  
7 to proceed before the assigned Magistrate Judge, the parties shall abide by the briefing schedule  
8 below.

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

15           4.       If Petitioner wishes to respond to the Answer, Petitioner shall do so by filing a  
16 Traverse with the court and serving it on Respondent within **twenty-eight (28) days** of  
17 Petitioner’s receipt of the Answer. Should Petitioner fail to do so, the petition will be deemed  
18 submitted and ready for decision **twenty-eight (28) days** after the date Petitioner is served with  
19 Respondent’s Answer.

20           5.       Respondent may file with this court and serve upon Petitioner, within **sixty (60)**  
21 **days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an  
22 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
23 2254 Cases. If Respondent files a motion to dismiss, Petitioner shall file with the court and serve  
24 on Respondent an opposition or statement of non-opposition to the motion within **twenty-eight**  
25 **(28) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner  
26 a reply within **fourteen (14) days** of receipt of any opposition.

27           6.       It is Petitioner’s responsibility to prosecute this case. Petitioner must keep the  
28 court and Respondent informed of any change of address and must comply with the court’s orders

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

10 7. Upon a showing of good cause, requests for a reasonable extension of time will be  
11 granted provided they are filed on or before the deadline they seek to extend.

12 IT IS SO ORDERED.

13 Dated: August 17, 2017



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DONNA M. RYU  
United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 FREDERICK STEWART,  
5 Plaintiff,

6 v.

7 WARDEN-SALINAS VALLEY STATE  
8 PRISON,  
9 Defendant.

Case No. [4:17-cv-01406-DMR](#)

**CERTIFICATE OF SERVICE**

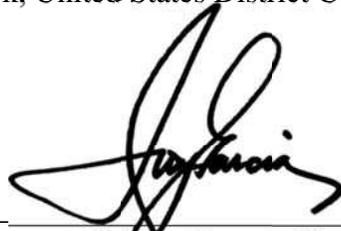
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
11 District Court, Northern District of California.

12 That on August 17, 2017, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.

16  
17 Frederick Stewart ID: AUO571  
18 P.O. Box 1020  
19 Soledad, CA 93960

20 Dated: August 17, 2017

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

23  
24  
25 By:  \_\_\_\_\_  
26 Ivy Lerma Gaten, Deputy Clerk to the  
27 Honorable DONNA M. RYU  
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