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

DARRYL ANDRES ESCALANTE,)
)
 Petitioner,)
)
 vs.)
)
 RANDY GROUNDS, Warden,)
)
 Respondent.)
 _____)

No. C 10-00959 JW (PR)

ORDER TO SHOW CAUSE;
DENYING MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS* AS
MOOT

(Docket No. 4)

Petitioner, a California inmate at the Correctional Training Facility in Soledad proceeding *pro se*, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the 2007 decision by the Board of Parole Hearings (the “Board”) finding petitioner unsuitable for parole. Petitioner has paid the filing fee.

BACKGROUND

According to the petition, petitioner was convicted of four counts of attempted murder with the use of a firearm. (Pet. at 6.) Petitioner was sentenced to life with the possibility of parole in state prison on August 23, 1999. On November 1, 2007, the Board found petitioner unsuitable for parole after his third parole consideration hearing. Petitioner challenged the Board’s decision by filing habeas petitions in the state courts,

Order to Show Cause
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United States District Court
For the Northern District of California

1 with the state high court denying review on February 10, 2010. Petitioner filed the
2 instant federal petition on March 5, 2010.

3 4 DISCUSSION

5 A. Standard of Review

6 This Court may entertain a petition for writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a state court only on the ground that he is
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

10 A district court shall “award the writ or issue an order directing the respondent to
11 show cause why the writ should not be granted, unless it appears from the application
12 that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 B. Petitioner’s Claims

14 Petitioner seeks federal habeas corpus relief from the Board’s November 1, 2007
15 decision finding him unsuitable for parole on the grounds that the decision was not
16 supported by some evidence that petitioner poses a current risk to public safety. (Pet. at
17 6.) Liberally construed, petitioner’s claim appears cognizable under § 2254 and merits
18 an answer from respondent.

19 20 CONCLUSION

21 For the foregoing reasons and for good cause shown,

22 1. The clerk shall serve by certified mail a copy of this order and the
23 petition and all attachments thereto on respondent and respondent’s attorney, the
24 Attorney General of the State of California. The clerk also shall serve a copy of this
25 order on petitioner.

26 2. Respondent shall file with the court and serve on petitioner, within **sixty**
27 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of
28 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus

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should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty (30) days** of his receipt of the answer.


3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within **thirty (30) days** of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of any opposition.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must also keep the court and all parties informed of any change of address.

5. Petitioner's motion for leave to proceed in forma pauperis (Docket No. 4) is DENIED as moot since petitioner has paid the filing fee.

This order terminates Docket No. 4.

DATED: May 10, 2010



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DARRYL A ESCALANTE,
Petitioner,

Case Number: CV10-00959 JW

CERTIFICATE OF SERVICE

v.

RANDY GROUNDS, Warden,
Respondent.

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

That on 5/13/2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Darryl Andres Escalante K-35540
Correctional Training Facility
P. O. Box 689
Soledad, CA 93960-0689

Dated: 5/13/2010

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk