

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Rico A. Contino

v.

Civil No. 09-cv-062-SM

James O'Mara, Superintendent,
Hillsborough County House of
Corrections

O R D E R

Before the Court is Rico Contino's petition for a writ of habeas corpus (document nos. 1, 2, 4 & 6). On March 13, 2009, I directed Contino to amend his petition to demonstrate that, at the time his petition was filed, he was in custody pursuant to a conviction or sentence he was challenging in his petition. I further directed Contino to show that each of his claims, including the federal nature of each claim, had been exhausted in the state courts. Contino timely filed an amendment to his petition (document no. 9). The matter is therefore before me for preliminary review to determine, among other things, whether the petition is facially valid and may proceed. See Rule 4 of the Rules Governing § 2254 Proceedings ("§ 2254 Rule") (requiring initial review to determine whether the petition is facially

valid and may be served); see also United States District Court District of New Hampshire Local Rule ("LR") 4.3(d) (authorizing the magistrate judge to preliminarily review pro se pleadings).

As explained fully in my Report and Recommendation, issued simultaneously with this Order, the claims in the petition, with the exception of the claim challenging an allegedly unconstitutional civil restraining order, may be considered. I, therefore, order the petition (document nos. 1, 2, 4, 6 & 9) to be served on respondents, along with my March 13, 2009 Order (document no. 8), the Report and Recommendation issued this date, and this Order. See § 2254 Rule 4. Service shall be made on the Respondent, Superintendent James O'Mara of the Hillsborough County House of Corrections, as well as the Office of the New Hampshire Attorney General, by certified mail. See id.; 28 U.S.C. § 2252.

Respondent shall file an answer or other pleading within thirty (30) days of the date of this Order. The answer shall comply with the requirements of § 2254 Rule 5 (setting forth contents of the answer).

Upon receipt of the response, the Court will determine whether a hearing is warranted. See § 2254 Rule 8 (providing circumstances under which a hearing is appropriate).

Petitioner is referred to Fed. R. Civ. P. 5, which requires that every pleading, written motion, notice, and similar paper, after the petition, shall be served on all parties. Such service is to be made by mailing the material to the parties' attorneys.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: April 16, 2009

cc: Rico Contino, pro se