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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY,  
and HOSSIE WELCH, on their own  
behalf and on behalf of the class  
of all persons similarly situated,

Plaintiffs,

v.

GRAY DAVIS, Governor of the State  
of California, et al.,

Defendants.

NO. CIV. S-94-671 LKK/GGH

ORDER

In response to plaintiff's motion for an order directing  
defendants to develop a remedy, defendants have requested that  
the court instead certify the matter for interlocutory appeal.  
Certification is appropriate where the "order involves a  
controlling question of law as to which there is a substantial  
ground for difference of opinion" and where "an immediate appeal  
from the order may materially advance the ultimate termination  
of the litigation." See 28 U.S.C. § 1292(b).

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1 The court's June 13, 2002 order involved a controlling  
2 question of law. The question, in which reasonable persons  
3 could disagree, is whether California's system of unitary parole  
4 revocation hearings is unconstitutional. In light of Pierre v.  
5 Wash. St. Bd. of Prison Terms & Paroles, 699 F.2d 471 (9th Cir.  
6 1983), the answer to this question remains uncertain. Moreover,  
7 the court's order would necessitate the State of California to  
8 engage in an overhaul of California's system of parole  
9 revocation hearings before other challenged aspects of the  
10 system had been adjudicated. Such an overhaul at this juncture  
11 would delay consideration of the other challenges, possibly  
12 trigger new challenges, and could require the State to adopt  
13 different requirements with each additional claim considered.  
14 Therefore, an immediate appeal on this matter would materially  
15 advance the ultimate termination of the litigation.

16 Accordingly, pursuant to 28 U.S.C. § 1292(b), the court's  
17 June 13, 2002 order is hereby CERTIFIED for interlocutory  
18 appeal.

19 IT IS SO ORDERED.

20 DATED: August 29, 2002.

21   
22 LAWRENCE K. KARLTON  
23 SENIOR JUDGE  
24 UNITED STATES DISTRICT COURT  
25  
26

United States District Court  
for the  
Eastern District of California  
September 4, 2002

\* \* CERTIFICATE OF SERVICE \* \*

2:94-cv-00671

Valdivias

v.

Wilson et al

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

That on September 4, 2002, 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, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

William Vernon Cashdollar                      SJ/LKK  
Attorney General's Office  
PO Box 944255  
1300 I Street  
Suite 125  
Sacramento, CA 94244-2550

Erika C Aljens  
Attorney General's Office  
PO Box 944255  
1300 I Street  
Suite 125  
Sacramento, CA 94244-2550

Stephen J Perrello Jr  
Law Office of Stephen J Perrello  
P O Box 880738  
San Diego, CA 92168

Alexander L Landon  
Law Offices of Alex Landon  
2442 Fourth Avenue  
San Diego, CA 92101

Karen Kennard  
Bingham McCutchen LLP  
Three Embarcadero Center  
Suite 1800  
San Francisco, CA 94111

Michael W Bien  
Rosen Bien and Asaro  
155 Montgomery Street  
Eighth Floor  
San Francisco, CA 94104

Donald Specter  
Prison Law Office  
General Delivery  
San Quentin, CA 94964

John T Philipsborn  
Law Offices of John T Philipsborn  
507 Polk Street  
Suite 250  
San Francisco, CA 94102

Jack L. Wagner, Clerk

BY: 

Deputy Clerk