

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY  DEPUTY

RAUL MEZA, §
PLAINTIFF, §

V. §

CAUSE NO. A-05-CA-1008-LY

BRAD LIVINGSTON, EXECUTIVE §
DIRECTOR OF THE TEXAS §
DEPARTMENT OF CRIMINAL §
JUSTICE, IN HIS OFFICIAL §
CAPACITY; STUART JENKINS, §
DIRECTOR OF THE TEXAS §
DEPARTMENT OF CRIMINAL §
JUSTICE PAROLE DIVISION, IN HIS §
OFFICIAL CAPACITY; AND RISSIE L. §
OWENS, JOSE ALISEDA, CHARLES §
AYCOCK, CONRITH DAVIS, JACKIE §
DENOYELLES, BARBARA LORRAINE, §
AND JUANITA GONZALES, IN THEIR §
OFFICIAL CAPACITIES AS MEMBERS §
OF THE TEXAS BOARD OF PARDONS §
AND PAROLE, §
DEFENDANTS. §

MEMORANDUM OPINION AND ORDER

Before the Court in the above styled and numbered cause is Plaintiff's Motion for Enforcement of Judgment and Contempt Against Defendants Owen, Aliseda, Aycock, Davis, Denoyelles, Lorraine, and Gonzales (Clerk's Document No. 413); Owens, Aliseda, Aycock, Davis, Denoyelles, Garcia and Gonzales' Opposition to Plaintiff's Motion for Enforcement of Judgment and Contempt filed December 13, 2010 (Clerk's Document No. 416); and Plaintiff's Reply to His Motion for Enforcement of Judgment and Contempt Against Defendants Owens, Aliseda, Aycock, Davis, Denoyelles, Lorraine, and Gonzalez filed January 21, 2011 (Clerk's Document No. 423). On March 29, 2011, the Court held a hearing on Plaintiff's motion. All parties appeared by and were represented by counsel. Having reviewed the motion, response, reply, as well as all evidence and

briefing submitted by the parties, and the arguments of counsel at the hearing, the Court determines that Plaintiff's motion should be granted in part as to Plaintiff's request for enforcement of judgment. Insofar as Plaintiff moves for contempt against the Board Defendants, the motion remains pending before the Court.

On March 24, 2009, this Court ordered the Board to provide Plaintiff Raul Meza a hearing with the following due process protections: (1) written notice in advance of the hearing; (2) disclosure of the evidence on which the State is relying; (3) a hearing, scheduled sufficiently after the notice to permit Meza to prepare, at which he will have the opportunity to be heard in person, represented by counsel, and to present documentary evidence in his support; (4) an opportunity at the hearing to call witnesses and confront and cross examine state witnesses, 'except upon a finding, not arbitrarily made, of good cause for not permitting each as to a particular witness'; (5) an independent decision maker; and, at issue here, (6) a written statement by the fact-finder as to the evidence relied upon and the reasons for the decision. Specifically, the Court found the record in this case was utterly devoid of findings regarding Meza and rejected the Board's argument that the continued imposition of sex-offender conditions constituted a sufficient finding that Meza possessed the offensive characteristic of lack of sexual control for the basis for such finding. On May 20, 2010, the Fifth Circuit affirmed these findings and conclusions, only disagreeing with this Court's finding that the State is required to provide counsel to Meza.

By his motion, Meza contends that after the Fifth Circuit's ruling, a hearing was conducted by the Board on June 4, 2010. On June 25, 2010, the panel voted unanimously in a one-page notice to continue Meza's sex-offender conditions. The findings were a single sentence: "Raul Meza constitutes a threat to society by reason of his lack of sexual control." On August 20, 2010, Meza

filed a motion for reconsideration with the Board and requested the Board provide the required written statement by the fact-finder as to the evidence relied upon and the reasons for the decision. To date, argues Meza, the Board has still not provided this required written statement. Meza asks the Court to appoint a third party to review the record of the hearing, make the required findings, and author the required written statement at the Board's expense. Meza also requests that the Court find the Board in contempt, levy a fine against each of the Board Defendants, and award Meza attorney's fees and costs associated with the preparation of this motion.

The Board responds that they have provided the required written statement. The Board refers the Court to the same one-page document as Meza which finds that Meza "constitutes a threat to society by reason of his lack of sexual control" and lists witnesses who testified and documents admitted at the hearing as evidence relied upon. The Board contends that neither the Government Code nor the Code of Criminal Procedure requires findings of fact and that a list of evidence presented is sufficient and that requiring specific findings "would have the potential to unnecessarily overburden the Board process by extending such a requirement to all parole-related decisions."

Having reviewed the motion, response, reply, as well as all evidence and briefing submitted by the parties, and the arguments of counsel at the hearing, the Court finds that the Board decision of June 25, 2010 does not comply with this Court's Order of March 24, 2009, as affirmed by the Court of Appeals. The Board's decision is not a "written statement by the fact-finder as to the evidence relied upon and the reasons for the decision" in that it contains neither reasons for the decision nor evidence relied upon. To be in compliance, the written statement must contain with specificity the evidence presented to the Board that was persuasive to the Board in its decision and the specific reasons for the decision.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Enforcement of Judgment and Contempt Against Defendants Owen, Aliseda, Aycock, Davis, Denoyelles, Lorraine, and Gonzales (Clerk's Document No. 413) is **GRANTED** insofar as the Board is **ORDERED** to prepare a new written statement **on or before April 29, 2011** that sets out with specificity the evidence relied upon and the reasons for its decision to continue Meza's sex-offender conditions. In all other respects, Plaintiff's Motion for Enforcement of Judgment and Contempt Against Defendants Owen, Aliseda, Aycock, Davis, Denoyelles, Lorraine, and Gonzales (Clerk's Document No. 413) remains pending before the Court.

SIGNED this 30th of March, 2011.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE