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

PHANHAHA XABANDITH,

Petitioner,

No. CIV S-09-2550 LKK DAD P

vs.

ROBERT A. HOREL,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se. In accordance with the court's November 9, 2009 order, petitioner has filed an amended petition for a writ of habeas corpus naming the proper respondent.¹

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner's habeas petition.

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¹ On December 23, 2009, the court issued findings and recommendations, recommending dismissal of this action due to petitioner's failure to timely file an amended petition. In fact, petitioner had timely filed his amended petition. However, the Clerk of the Court inadvertently opened a new action and mistakenly filed his petition in that case. See Case No. CIV S-09-3244 DAD P. Good cause appearing, the court will vacate its findings and recommendations and allow the case to proceed on petitioner's amended petition, which has since been re-filed in this action, and in accordance with this order.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. The court's December 23, 2009 findings and recommendations are vacated;

3 2. Respondent is directed to file a response to petitioner's November 20, 2009
4 amended petition within sixty days from the date of this order. See Rule 4, Fed. R. Governing §
5 2254 Cases. An answer shall be accompanied by all transcripts and other documents relevant to
6 the issues presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

7 3. If the response to the habeas petition is an answer, petitioner's reply, if any,
8 shall be filed and served within thirty days after service of the answer;

9 4. If the response to the habeas petition is a motion, petitioner's opposition or
10 statement of non-opposition to the motion shall be filed and served within thirty days after
11 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days
12 thereafter; and

13 5. The Clerk of the Court shall serve a copy of this order, a copy of the November
14 20, 2009 amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a copy of
15 the form regarding consent or request for reassignment on Michael Patrick Farrell, Senior
16 Assistant Attorney General.

17 DATED: February 3, 2010.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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