

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

ROBERT S. MITCHELL
ADC #119186

PETITIONER

v.

Case No: 4:23-cv-00742-LPR-JTK

DEXTER PAYNE,
Director, Arkansas Division of Correction

RESPONDENT

ORDER

The Court has reviewed the Recommendation submitted by United States Magistrate Judge Jerome T. Kearney (Doc. 26). No objections have been filed, and the time for doing so has expired. After a careful review of the Recommendation, the Court hereby approves and adopts the Recommendation's conclusion that the Motion to Dismiss be denied in favor of requiring Respondent to file a full Response. The Court is very unsure that the Recommendation's analysis of Rule 5 is right, especially in a case where the Magistrate Judge expressly directed Respondent to file "an answer, motion, or other response." Doc. 9. But the Court need not wade into that particular thicket because Respondent did not object to the Recommendation. As the Court understands it, in substance the Recommendation simply wants more information to evaluate Petitioner's claim—the type of information that a Response would provide but a motion to dismiss would not.

Accordingly, Respondent's Motion to Dismiss (Doc. 11) is DENIED. Respondent must file its Response to the Petition in its entirety within 30 days, addressing all claims and arguments made in Mr. Mitchell's Petition (Doc. 1) and in Mr. Mitchell's Response to the Motion to Dismiss (Doc. 16).

IT IS SO ORDERED this 25th day of September 2024.

A handwritten signature in black ink, appearing to read 'Lee P. Rudofsky', written over a horizontal line.

LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE