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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OLLIE BLEDSOE, JR.,)	Case No. CV14-0301-SVW (DTB)
Petitioner,)	
vs.)	ORDER VACATING ORDER TO
MARTIN BIBER, Warden,)	SHOW CAUSE; ORDER REQUIRING
Respondent.)	RESPONSE TO PETITION

On February 14, 2014, the Court issued an Order to Show Cause (“OSC”) ordering petitioner to show cause in writing why the Court should not recommend that this action be dismissed with prejudice on the ground of untimeliness. Petitioner filed his Response to the OSC on May 29, 2014. The Court has read and considered petitioner’s Response, and it is still unclear to the Court whether or not the Petition is untimely and whether or not petitioner is entitled to any equitable tolling of the applicable limitations period. As such, the Court hereby VACATES the OSC.

In order to facilitate the just, speedy, and inexpensive determination of this action, **IT IS ORDERED** that:

1. The Clerk of this Court shall promptly (a) serve electronic copies of the Petition and this Order on the California Attorney General’s Office; and (b) serve a copy of this Order on petitioner.

1 2. The Clerk shall also serve petitioner with a copy of the Consent to
2 Proceed Before a United States Magistrate Judge (Form CV-11B) along with this
3 Order. If petitioner wishes to exercise the consent option, he shall file a completed
4 Form CV-11B with the Clerk and serve Respondent with same within twenty-eight
5 (28) days of this date. Respondent shall have until the date of the filing of the initial
6 response to the Petition in which to exercise the consent option by filing and serving
7 a completed Form CV-11B. The magistrate judge shall not be informed of a party's
8 response unless all parties have consented to the referral. **The parties are free to**
9 **withhold consent without adverse substantive consequences.**

10 3. Respondent shall e-file and serve a Notice of Appearance that designates
11 the Deputy Attorney General(s) in charge of the case within fourteen (14) days of the
12 service date of this Order.

13 4. If respondent contends that the Petition can be decided without the Court
14 reaching the merits of petitioner's claims (e.g., because respondent contends that
15 petitioner is unable to satisfy the "in custody" requirement, or that petitioner has
16 failed to exhaust any state remedies as to any ground for relief alleged in the Petition,
17 or that the Petition is barred by the applicable statute of limitations), respondent shall
18 file a Motion to Dismiss within thirty (30) days of the date of this Order.¹ The
19 Motion to Dismiss shall not address the merits of petitioner's claims, but rather shall
20 be confined to the basis for respondent's contention that dismissal without reaching
21 the merits of petitioner's claims is warranted.² At the time the Motion to Dismiss is
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23 ¹ If respondent contends that some or all of petitioner's claims are
24 procedurally defaulted, such contention should not be made in a Motion to Dismiss,
25 but rather should be made in an Answer to Petition which addresses the allegedly
26 defaulted claims on the merits in the alternative.

27 ² If respondent contends that petitioner has failed to exhaust any state
28 remedies as to any ground for relief alleged in the Petition, the motion to dismiss shall
(continued...)

1 filed, respondent shall lodge with the Court all records bearing on respondent's
2 contention in this regard.

3 5. If respondent files a Motion to Dismiss, petitioner shall file his
4 opposition, if any, to the Motion within twenty (20) days of the date of service
5 thereof. At the time the opposition is filed, petitioner shall lodge with the Court any
6 records not lodged by respondent which petitioner believes may be relevant to the
7 Court's determination of the Motion.

8 6. Unless the Court orders otherwise, respondent shall not file a reply to
9 petitioner's opposition to a Motion to Dismiss. If the Motion is denied, the Court will
10 afford respondent adequate time to answer petitioner's claims on the merits.

11 7. If respondent does not contend that the Petition can be decided without
12 the Court reaching the merits of petitioner's claims, then respondent shall file and
13 serve an Answer to Petition within forty-five (45) days of the date of this Order. At
14 the time the Answer is filed, respondent shall lodge with the Court all records bearing
15 on the merits of petitioner's claims, including the briefs specified in Rule 5(d) of the
16 Rules Governing Section 2254 Cases in the United States District Courts. The
17 Answer shall also specifically address the necessity for an evidentiary hearing to
18 resolve any issue.

19 8. Petitioner may file a single Reply responding to matters raised in the
20 Answer within thirty (30) days of the date of service thereof. Any Reply filed by
21 petitioner (a) shall state whether petitioner admits or denies each allegation of fact
22 contained in the Answer; (b) shall be limited to facts or arguments responsive to
23 matters raised in the Answer; and (c) shall not raise new grounds for relief that were
24 not asserted in the Petition. Grounds for relief withheld until the Reply will not be
25 considered, unless the Court grants leave to amend the Petition. No Reply shall
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27 ²(...continued)

28 also specify the state remedies still available to petitioner.

1 exceed twenty-five (25) pages in length absent advance leave of Court for good cause
2 shown.

3 9. A request by a party for an extension of time within which to file any of
4 the pleadings required hereunder will be granted only upon a showing of good cause,
5 and should be made in advance of the due date of the pleading. Any such request
6 shall be accompanied by a declaration explaining why an extension of time is
7 necessary and by a proposed form of order granting the requested extension.

8 10. Unless otherwise ordered by the Court, this case shall be deemed
9 submitted on the day following the date petitioner's opposition to a Motion to
10 Dismiss and/or Reply is due.

11 11. Every document delivered to the Court must include a certificate of
12 service attesting that a copy of such document was served on opposing counsel (or
13 on the opposing party, if such party is not represented by counsel). Any document
14 delivered to the Court without a certificate of service may be returned to the
15 submitting party and without consideration by the Court.

16 12. Petitioner shall immediately notify the Court and counsel for respondents
17 of any change of petitioner's address. If petitioner fails to keep the Court informed
18 of where petitioner may be contacted, this action will be subject to dismissal for
19 failure to prosecute. See Local Rule 41-6.

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21 DATED: June 11, 2014



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23
24 DAVID T. BRISTOW
UNITED STATES MAGISTRATE JUDGE