

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLENN MASON,

1:08-cv-00954-LJO-DLB (HC)

Petitioner,

ORDER GRANTING RESPONDENT'S
REQUEST TO WITHDRAW MOTION TO
DISMISS AND GRANTING EXTENSION OF
TIME TO AND INCLUDING FEBRUARY 1,
2009 TO FILE ANSWER TO PETITION

v.

JOHN POVEY, Director

[Doc. 18]

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on February 4, 2008. (Court Doc. 1.) On October 15, 2008, Respondent filed a motion to dismiss the petition as untimely. (Court Doc. 13.) Petitioner filed an opposition on December 1, 2008. (Court Doc. 16.)

On December 12, 2008, the Court issued an order directing Respondent to address the applicability of the mailbox rule to the determination of whether the petition is timely. (Court Doc. 17.) On December 31, 2008, Respondent filed a response requesting to withdraw the motion to dismiss because applying the mailbox rule to the state court filings renders the instant petition timely. (Court Doc. 18.) Respondent requests to and including February 1, 2009, to file an answer addressing the merits of the petition. (Id.)

Accordingly, it is HEREBY ORDERED that:

1. Respondent's motion to dismiss filed on October 15, 2008 (Court Doc. 13), is

WITHDRAWN and STRICKEN from the record; and

2. Respondent is granted to and including February 1, 2009, to file an answer to the instant petition.

IT IS SO ORDERED.

Dated: January 5, 2009

/s/ **Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE