

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RICHARD KIMBRO,)	1:08-cv-1509 AWI YNP (DLB) (HC)
)	
Petition,)	ORDER ON SETTING DATE TO FILE
)	AMENDED MOTION TO DISMISS,
v.)	DENYING CURRENT MOTION TO
)	DISMISS, and ADMINISTRATIVE
)	ORDER
WARDEN AT HIGH DESERT STATE)	
PRISON,)	(Document Nos. 10, 16)
)	
Respondent.)	

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

On January 8, 2009, Respondent filed a motion to dismiss, which is Document 10 in the Court’s docket. On the February 26, 2009, Petition filed an opposition, which is Document 16 on the Court’s docket. Although Document 16 is an opposition and not a motion, that document is appearing as a motion in the Court’s records.

On September 4, 2009, the Magistrate Judge ordered the Respondent to file an amended motion to dismiss, but did not set a date for filing the motion to dismiss. See Court’s Docket Doc. No. 26. In light of the order to file an amended motion to dismiss, the original motion to

1 dismiss (Document 10) is now moot. However, since Respondent has yet to file the amended
2 motion to dismiss, it is necessary to set a deadline.

3
4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Respondent's motion to dismiss (Document 10) is DENIED as moot in light of
6 the September 4, 2009, order by the Magistrate Judge;
- 7 2. Respondent is to file an amended motion that complies with the September 4,
8 2009 order within twenty (20) days of service of this order; and
- 9 3. For administrative purposes, Document No. 16 is to be classified as an
10 OPPOSITION and not as a motion to which further Court action is required.

11
12 IT IS SO ORDERED.

13 **Dated: September 16, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE