

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN TILLMAN,

1:11-CV-00453 GSA HC

Petitioner,

ORDER DENYING PETITIONER'S
MOTION FOR CLARIFICATION AND
DISPOSITION OF MOTION TO AMEND
[Doc. #18]

V.

**ORDER GRANTING EXTENSION OF TIME
TO FILE AMENDED PETITION**

H. A. RIOS, JR.,

Respondent.

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On May 3, 2011, the undersigned issued an order that denied Petitioner's motion for reconsideration in part, but construed Petitioner's motion for relief in part as a motion to amend. The motion to amend was granted and Petitioner was provided thirty (30) days to file an amended petition. Petitioner appealed the Court's ruling on May 16, 2011, and the Ninth Circuit dismissed the appeal on June 28, 2011. See Tillman v. Rios, Case No. 11-16247 (June 28, 2011, 9th Cir.). On May 17, 2011, Petitioner filed the instant motion for clarification and disposition of his motion to amend. He contends the Court's order granting him leave to file an amended petition was done in

1 bad faith since “clearly [the Court] has everything to be considered for petitioner’s claim and is ripe
2 for ruling upon” and “[t]his Court did not have to (stay) Respondent to file a response to Petitioner’s
3 amended complaint, because it is already served on Respondent and clearly a part of this Court’s
4 Record.” See Pet’r’s Motion at 2. Petitioner’s allegations are not well-taken. A habeas proceeding is
5 comprised of three main filings: the Petition, the Answer, and the optional Traverse. The petition
6 must be complete in and of itself. See Local Rule 220. If Petitioner wishes to present new claims or
7 submit further argument, he cannot do so in a piecemeal fashion by reference to supplemental briefs
8 and motions. Id.; Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.1967) (An amended pleading must be
9 complete in itself without reference to any prior pleading). In this case, Petitioner stated he desired
10 to challenge another incident report and present additional evidence. Insofar as his motion is in fact
11 a motion and cannot be considered a complete petition, Petitioner was granted the opportunity,
12 consistent with the Local Rules and proper habeas practice and procedure, to file an amended
13 petition to include all of his claims and evidence.

14 Given Petitioner’s apparent confusion, the Court will grant an additional extension of time to
15 file an amended petition. He is advised that the amended petition must be complete in itself and may
16 not reference other pleadings; he must reference the instant case number; and he must title the
17 pleading “First Amended Petition.”

18 Accordingly, IT IS HEREBY ORDERED:

19 1) Petitioner’s motion for clarification and disposition of motion to amend is DENIED; and
20 2) Petitioner is GRANTED thirty (30) days to file an amended petition.

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22 IT IS SO ORDERED.

23 Dated: July 7, 2011

24 /s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE
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