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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMIE GUSTAVO GAYTAN-GONZALEZ, 1:11-cv-00965 AWI MJS HC

Petitioner,

v.

MICHAEL L. BENOVA,

Respondent.

ORDER GRANTING LEAVE TO AMEND  
TO FILE AMENDED PETITION AND  
DIRECTING CLERK OF COURT TO SEND  
BLANK § 2241 FORM PETITION

[Doc. 6]

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

Petitioner filed the instant petition for writ of habeas corpus on June 13, 2011. (Pet., ECF No. 1.) On November 22, 2011, Petitioner filed a motion to amend the petition. (Mot., ECF No. 6.) Rule 15(a) of the Federal Rules of Civil Procedure provides, in relevant part:

(1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of course: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Petitioner may amend as a matter of course up to 21 days after a responsive pleading or motion is filed. Respondent has yet to file a response. Accordingly, Petitioner's motion to file an amended petition is GRANTED.

1 Petitioner is forewarned that Rule 2 of the "Rules Governing Section 2254 Cases"  
2 provides that the petition "... must specify all the grounds for relief available to the  
3 petitioner; state the facts supporting each ground; state the relief requested..." Rule 2 of  
4 the Rules Governing 2254 Cases. Rule 2 further provides that the petition "must  
5 substantially follow either the form appended to these rules or a form prescribed by a local  
6 district-court rule. The clerk must make forms available to petitioners without charge." Id.  
7 at 2(c).

8 In addition, Rule 4 of the Rules Governing § 2254 Cases requires the Court to make  
9 a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a  
10 petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief."  
11 Rule 4 of the Rules Governing 2255 Cases; see also Hendricks v. Vasquez, 908 F.2d 490  
12 (9th Cir. 1990).

13 Petitioner is advised that an amended petition supercedes the original petition,  
14 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d  
15 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or  
16 superceded pleading." Local Rule 220. Accordingly, Petitioner's last filed amended petition  
17 must contain all the claims Petitioner wishes to present before the Court. Plaintiff is warned  
18 that "[a]ll causes of action alleged in an original complaint which are not alleged in an  
19 amended complaint are waived." King, 814 F.2d at 567 (citing to London v. Coopers &  
20 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)). The Court will grant Petitioner leave to  
21 determine the pleadings and exhibits he wishes to include in the instant petition.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. Petitioner is GRANTED thirty (30) days from the date of service of this Order  
24 to SUBMIT an AMENDED PETITION. The amended petition should be  
25 clearly and boldly titled "AMENDED PETITION," contain the appropriate case  
26 number, and be an original signed under penalty of perjury;
- 27 2. The Clerk of Court is DIRECTED to send Petitioner a blank form petition for  
28 petitioners filing pursuant to 28 U.S.C. § 2241; and,

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3. Petitioner is forewarned that his failure to comply with this order may result in a Recommendation that the petition be dismissed pursuant to Local Rule 110.

IT IS SO ORDERED.

Dated: November 28, 2011

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE