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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 RUBEN VALDEZ,

11 Petitioner,

12 v.

13  
14 CONNIE GIPSON, Warden,

15 Respondent.  
16

Case No. 1:12-cv-01784 AWI MJS (HC)

ORDER DIRECTING RESPONDENT TO  
RESPOND TO MOTION TO AMEND  
PETITION FOR WRIT OF HABEAS  
CORPUS

(Doc. 39)

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

20 On November 1, 2012, Petitioner filed a petition for writ of habeas corpus. (Pet.,  
21 ECF No. 1.) On January, 2013, Petitioner filed a motion to amend along with a first  
22 amended petition for writ of habeas corpus. (ECF Nos. 19, 30.) The Court granted the  
23 motion to amend, and Respondent filed an answer to the petition on March 5, 2013.  
24 (Answer, ECF No. 24.) On February 10, 2015, the Court issued findings and a  
25 recommendation to deny the first amended petition. (ECF No. 38.)

26 A week later on February 17, 2015, the Court received a motion to amend the  
27 petition for writ of habeas corpus, along with a copy of a second amended petition. The  
28 motion was dated on February 2, 2015, prior to the issuance of the findings and

1 recommendation to deny the first amended petition.

2 In the second amended petition, Petitioner includes two new claims, claims 9 and  
3 10. In claim 9, Petitioner contends that the trial court violated his due process rights by  
4 allowing the prosecution to present false testimony at trial. In claim 10, Petitioner claims  
5 that his right to a fair trial was violated due the presentation of an excessive amount of  
6 testimony regarding Petitioner's past criminal and gang related conduct.

7 The second amended petition was filed over three years after Petitioner filed the  
8 original petition with this court. Without the benefit of relation back, it appears that the  
9 newly filed claims contained in the second amended petition are untimely.<sup>1</sup>

10 Accordingly, IT IS HEREBY ORDERED that:

11 Respondent is required to file an opposition to the motion to amend, and  
12 specifically address whether based on relation back under Fed. Rule Civ. P. 15(c), the  
13 claims should be considered timely filed. The opposition is due within twenty-one (21)  
14 days of the date of issuance of this order. Petitioner may file a reply to the opposition  
15 within fourteen (14) days of date of service of Respondent's opposition.

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17 IT IS SO ORDERED.

18 Dated: June 11, 2015

19 /s/ Michael J. Seng  
20 UNITED STATES MAGISTRATE JUDGE  
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27 <sup>1</sup> The court also notes that claim 10 appears to be similar, if not identical, to claim 1 of the first  
28 amended petition. To the extent that the claim has already been addressed on the merits by the Court, the  
court requests Respondent confirm that no further issues remain with regard to the claim.