

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

RUBEN VALDEZ.

Petitioner,

v.

CONNIE GIPSON, Warden,

Respondent.

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)

CONNIE GIPSON, Warden,

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

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

A week later on February 17, 2015, the Court received a motion to amend the petition for writ of habeas corpus, along with a copy of a second amended petition. The 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.¹

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.

16 IT IS SO ORDERED.

17 Dated: June 11, 2015

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

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27 ¹ 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.