

1  
2  
3  
4  
5  
6  
7       **UNITED STATES DISTRICT COURT**  
8                   **EASTERN DISTRICT OF CALIFORNIA**  
9

10      VESTER L. PATTERSON,

11                   Petitioner,

12                   v.

13      JOEL MARTINEZ,

14                   Respondent.

Case No. 1:16-cv-01215-LJO-SAB-HC

ORDER GRANTING MOTION TO AMEND  
(ECF No. 11)

ORDER TO RESPOND TO FIRST  
AMENDED PETITION (ECF No. 10)

ORDER SETTING BRIEFING SCHEDULE

16      Petitioner is state prisoner proceeding pro se with a petition for writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2254. On September 26, 2016, Petitioner filed a first amended petition  
18 (ECF No. 10) and a motion for an order to direct the Clerk of Court to serve the amended  
19 petition (ECF No. 11), which the Court previously construed as a motion to amend (ECF No.  
20 12). Respondent does not oppose Petitioner's motion to amend. (ECF No. 13).

21      In light of Respondent's statement of non-opposition to the motion to amend, the Court  
22 HEREBY ORDERS that:

23      1. Petitioner's motion to amend (ECF No. 11) is GRANTED;  
24      2. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL  
25                   FILE a RESPONSE to the Amended Petition (ECF No. 33). See Rule 4, Rules  
26                   Governing Section 2254 Cases; Cluchette v. Rushen, 770 F.2d 1469, 1473–74 (9th  
27                   Cir. 1985) (court has discretion to fix time for filing a response). A Response can be  
28                   made by filing one of the following:

1                   A.     AN ANSWER addressing the merits of the First Amended Petition. Any  
2                   argument by Respondent that Petitioner has procedurally defaulted a claim  
3                   SHALL BE MADE in the ANSWER, but must also address the merits of the  
4                   claim asserted.

5                   B.     A MOTION TO DISMISS the First Amended Petition.

6                   3. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL  
7                   FILE any and all transcripts or other documents necessary for the resolution of the  
8                   issues presented in the First Amended Petition. See Rule 5(c), Rules Governing  
9                   Section 2254 Cases.

10                  4. If Respondent files an Answer to the First Amended Petition, Petitioner MAY FILE a  
11                  Traverse within **THIRTY (30) days** of the date Respondent's Answer or written  
12                  submission is filed with the Court. If no Traverse is filed, the First Amended Petition  
13                  and Answer are deemed submitted at the expiration of the thirty days.

14                  5. If Respondent files a Motion to Dismiss, Petitioner SHALL FILE an Opposition or  
15                  Statement of Non-Opposition within **TWENTY-ONE (21) days** of the date  
16                  Respondent's Motion is filed with the Court. Any Reply to an Opposition to the  
17                  Motion to Dismiss SHALL be filed within **SEVEN (7) days** after the Opposition is  
18                  served. The Motion to Dismiss will be deemed submitted **TWENTY-EIGHT (28)**  
19                  **days** after the service of the Motion or when the Reply is filed, whichever comes  
20                  first. See Local Rule 230(l).

21                  IT IS SO ORDERED.

22                  Dated: October 11, 2016



23                  

---

24                  UNITED STATES MAGISTRATE JUDGE