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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 JORGE ANTONIO MILAN-RODRIGUEZ,

10 Petitioner,

11 v.

12 LORETTA E. LYNCH,

13 Respondent.

Case No. 1:16-cv-01578-SAB-HC

ORDER TERMINATING AS MOOT
MOTION TO DISMISS (ECF No. 13)

ORDER TO RESPOND TO FIRST
AMENDED PETITION

ORDER SETTING BRIEFING SCHEDULE

14
15 Petitioner, a federal immigration detainee proceeding pro se, has filed a First Amended
16 Petition for Writ of Habeas Corpus (“FAP”) pursuant to 28 U.S.C. § 2241.

17 The Court has conducted a preliminary review of the FAP, wherein Petitioner challenges
18 his prolonged detention, the constitutional adequacy of his bond hearing, and his transfer to the
19 Pine Prairie Correctional Center in Louisiana, where Petitioner is currently detained. It is not
20 clear from the face of the FAP whether Petitioner is entitled to relief. 28 U.S.C. § 2243.

21 Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases,¹ the Court
22 HEREBY ORDERS:

- 23 1. Respondent’s motion to dismiss the original petition (ECF No. 13) is
24 TERMINATED as MOOT in light of the filing of the FAP.
- 25 2. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL
26 FILE a RESPONSE to the FAP. See Rule 4, Rules Governing Section 2254

27 ¹ The Rules Governing Section 2254 Cases apply to § 2241 habeas petitions. See Rule 1(b) of the Rules Governing
28 Section 2254 Cases (“The district court may apply any or all of these rules to a habeas corpus petition not covered
by” 28 U.S.C. § 2254.).

1 Cases; Cluchette v. Rushen, 770 F.2d 1469, 1473-74 (9th Cir. 1985) (court has
2 discretion to fix time for filing a response). A Response can be made by filing one
3 of the following:

4 A. AN ANSWER addressing the merits of the FAP. Any argument by
5 Respondent that Petitioner has procedurally defaulted a claim SHALL BE
6 MADE in the ANSWER, but must also address the merits of the claim
7 asserted.

8 B. A MOTION TO DISMISS the FAP.

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

12 4. If Respondent files an Answer to the FAP, Petitioner MAY FILE a Traverse
13 within **THIRTY (30) days** of the date Respondent's Answer is filed with the
14 Court. If no Traverse is filed, the FAP and Answer are deemed submitted at the
15 expiration of the thirty days.

16 5. If Respondent files a Motion to Dismiss, Petitioner SHALL FILE an Opposition
17 or Statement of Non-Opposition within **TWENTY-ONE (21) days** of the date
18 Respondent's Motion is filed with the Court. Any Reply to an Opposition to the
19 Motion to Dismiss SHALL be filed within **SEVEN (7) days** after the opposition
20 is served. The Motion to Dismiss will be deemed submitted **TWENTY-EIGHT**
21 **(28) days** after the service of the Motion or when the Reply is filed, whichever
22 comes first. See Local Rule 230(1).

23 IT IS SO ORDERED.

24 Dated: February 22, 2017

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27 UNITED STATES MAGISTRATE JUDGE
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