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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD ANTHONY PETERSON,  
Petitioner,  
v.  
JOE LIZARRAGA, Warden of MCSP,  
Respondent.

No. 1:17-cv-01537-LJO-SKO HC

**ORDER DIRECTING RESPONDENT TO  
FILE STATUS REPORTS REGARDING  
THE 2012 TRIAL TRANSCRIPT**

Petitioner, Richard Anthony Peterson, is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner currently has four motions for sanctions pending before this Court, including: (1) Doc. 43: Motion for Sanctions Due to Failure of State to Obey Court Orders; (2) Doc. 44: Additional Request for Sanction Due to Failure to Obey Court's Order – Immediate Release Pending Determination; (3) Doc. 52: Motion for Sanctions Memorandum; (4) Doc. 53: Motion for Sanctions Memorandum. Because Respondent is continuing his efforts to locate a transcript from Petitioner's 2012 mistrial, the Court will order Respondent to file status reports.

1           **I. Procedural Background**

2           On October 19, 2017, before transferring this case from the Sacramento Division of the  
3 United States District Court for the Eastern District of California to the Fresno Division, United  
4 States Magistrate Judge Gregory C. Hollows ordered Petitioner to file his petition for writ of  
5 habeas corpus within 60 days. Judge Hollows also ordered Respondent to file a response to  
6 Petitioner’s habeas petition “accompanied by all transcripts and other documents relevant to the  
7 issues presented in the petition.” (Doc. 11 at 1.)

8           On October 30, 2017, Petitioner filed his petition for writ of habeas corpus.

9           On November 17, 2017, Judge Hollows ordered that the case be transferred from the  
10 Sacramento Division to this Court. (Doc. 17.)

11           After several extensions of time, Respondent filed an answer to the petition and lodged  
12 documents in support of the answer on February 27, 2018. (Docs. 34, 35.) The following day,  
13 Respondent requested a 14 day extension of time to serve the lodged documents on Petitioner,  
14 which the Court granted on March 2, 2018. (Docs. 36, 37.)

15           On March 5 and 9, 2018, Petitioner filed motions for sanctions against Respondent for  
16 failing to serve the lodged documents, (Doc. 38, 40), which the Court denied as premature. (Doc.  
17 45.)

18           In his March 9, 2018 motion for sanctions, Petitioner noted that Respondent’s notice of  
19 lodged documents did not include a transcript from Petitioner’s 2012 mistrial or transcripts from a  
20 2011 preliminary hearing. (Doc. 40 at 1.) Petitioner also filed two motions for sanctions on  
21 March 23, 2018. (Docs. 43, 44). The Court directed Respondent to file a status report detailing  
22 whether Respondent had complied with the Court’s order to provide Petitioner with “all  
23 transcripts and other documents relevant to the issues presented in the petition.” (Doc. 11 at 1.)  
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1 On March 29, 2018, Respondent filed a status report stating that he had served the lodged  
2 state court record on Petitioner on March 8, 2018. (Doc. 26.) In response to Petitioner's  
3 contention that the lodged documents did not include the transcript from Petitioner's 2012  
4 mistrial or transcripts from a 2011 preliminary hearing, Respondent stated:

5  
6 the Kern County Superior Court did not have a copy of the preliminary hearing  
7 transcripts in its files. Respondent then contacted the court reporter in attendance  
8 at the preliminary hearing, Diana Zissos, who is now retired. Respondent hired  
9 Mrs. Zissos to prepare a copy of the preliminary hearing transcript at a cost of  
\$123.00. Mrs. Zissos completed the transcript on March 23, 2018, and mailed it  
to Respondent shortly thereafter. Respondent will promptly lodge the transcript  
and serve Petitioner with a copy once it is received.

10 Finally, as Respondent stated in his response filed March 14, 2018, he does not  
11 have a copy of the transcript of the 2012 trial ending in a mistrial, and a transcript  
12 evidently was never prepared. *See People v. Peterson*, 2015 WL 8484075, \*12  
13 (Dec. 10, 2015) ("The instant record does not contain the reporter's transcript for  
the first trial.").

14 *Id.* at 2.

15 On April 24, 2018, Respondent notified the Court that he had contacted the secretary for  
16 Gloria Cannon, Petitioner's public defender, to locate a transcript of the 2012 mistrial and that  
17 Ms. Cannon was searching her records. (Doc. 54.) On April 27, 2018, Petitioner notified the  
18 Court that he received the 2011 preliminary hearing transcripts. (Doc. 55.) Because Respondent  
19 continues to seek the 2012 transcript, the Court will Order Respondent to file status reports.

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21 The Court understands that Petitioner is frustrated due to delayed filings, and appreciates  
22 both parties' consideration as Respondent seeks the 2012 transcript.

## 23 **II. Conclusion and Recommendation**

24 Accordingly:

- 25 1. Respondent is DIRECTED to file a status report within thirty (30) days of the date of  
26 this Order advising the Court and Petitioner of the status of the 2012 transcript.
- 27 2. Respondent shall file an additional status report every ninety (90) days thereafter.  
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3. Within seven (7) days after locating the 2012 transcript, Respondent shall file a notice with the Court regarding the status of the transcript and shall provide a copy to Petitioner.

IT IS SO ORDERED.

Dated: May 7, 2018

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE