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

NATHANIEL POPLAR,

Petitioner,

No. 2: 12-cv-1368 JAM KJN P

vs.

M. BITER,

Respondent.

ORDER

_____ /


Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 21, 2012, respondent filed an answer to the petition. On December 17, 2012, petitioner filed a reply to the answer. The petition is now submitted for decision.

On September 26, 2012, petitioner filed a “motion counter claims Federal Rules of Civil Procedure, Rule 13.” In this motion, petitioner requests that the criminal charges against him be dismissed because the state court lacked jurisdiction. In particular, petitioner argues that there was insufficient evidence to support the gang enhancement based on his statement to the victim, “My kids got to eat.” The court construes petitioner’s September 26, 2012 motion as further briefing in support of his claim alleging insufficient evidence to support the gang enhancement. The court will consider the arguments raised in petitioner’s September 26, 2012

1 motion at the time it considers the merits of the petition.

2 Accordingly, IT IS HEREBY ORDERED that petitioner's September 26, 2012
3 motion of counter claims (Dkt. No. 14) is construed as further briefing in support of the petition.

4 DATED: April 11, 2013

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6 
7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

8 pop1368.ord

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