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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYDE HOLLIS HARRIS,  
Petitioner,  
v.  
DOMINGO URIBE, JR.,  
Respondent.

No. 2:12-cv-1502 AC P

ORDER

Currently before the court is respondent’s fully briefed motion to dismiss, which is set for hearing on August 10, 2016.

In reviewing the briefing on the motion, the court notes that respondent argues for the first time in his reply that the claims in the amended petition are untimely. ECF No. 82. While the motion to dismiss claims, in a footnote, that timeliness issues “seem[] likely,” respondent also states in his moving papers that it is “premature to assert that Petitioner’s new claims are untimely” and does not brief the issue. ECF No. 69 at 8 n.2. Presumably in response to that footnote, petitioner makes a very brief argument that for the same reasons there has not been intentional delay,<sup>1</sup> equitable tolling should apply and “any purported failure to meet the one year

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<sup>1</sup> Although petitioner addressed the intentional delay factor of the test established in Rhines v. Weber, 544 U.S 269 (2005), he also asserts that a stay is no longer necessary because his new claims have been exhausted. ECF No. 78 at 3-5.

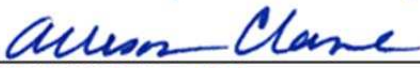
1 statute of limitations under AEDPA should be excused.” ECF No. 78 at 3-6. Petitioner’s brief  
2 response to respondent’s passing comment that the new claims are “likely” untimely does not  
3 justify the extensive briefing on the statute of limitations issue that respondent now submits in his  
4 reply (ECF No. 82 at 8-25). See Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1176 (9th Cir.  
5 1996) (improper to raise arguments for the first time in reply brief). However, because the issue  
6 may be dispositive, the court will consider briefing on the matter. To promote judicial efficiency  
7 and a more expeditious resolution of the matter, the court will vacate the current motion to  
8 dismiss and respondent will be given an opportunity to file a single, comprehensive motion to  
9 dismiss.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Respondent’s motion to dismiss and the August 10, 2016 hearing on the motion are  
12 VACATED.

13 2. Respondent shall have thirty days from service of this order to file a new motion to  
14 dismiss with briefing to be completed as set forth in Local Rule 230(c) and (d).

15 DATED: August 4, 2016

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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