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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ISMAEL ROSALES ANICETO,
Petitioner,
v.
WARDEN FOULK,
Respondent.

No. 2:13-cv-1819 KJN P

ORDER

Petitioner, proceeding through appointed counsel, seeks an extension of time until November 9, 2013, in which to file a petition for writ of habeas corpus. Counsel for respondent filed an opposition to the motion only to the extent that his failure to do so might be deemed to alter the statutory deadline for filing such petitions pursuant to 28 U.S.C. § 2244(d). (ECF No. 12.) Respondent suggests that because the one year statute of limitations period commenced on September 13, 2013, it is unlikely the limitations period will be implicated any time soon. (ECF No. 12 at 2.)

As set forth in this court’s prior order, in order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases. (ECF No. 3 at 2.) Because no petition was filed, this action had not “commenced” and the statute of limitations period continued to run, therefore counsel was directed to file a petition for writ of habeas corpus forthwith.


1 However, petitioner is now represented by counsel. Petitioner's counsel was not formally
2 appointed until September 19, 2013, and counsel states that she has not had sufficient time to
3 obtain the trial record and accompanying documents and to review the documents. Extending this
4 deadline does not alter the limitations period set forth in 28 U.S.C. § 2244(d).

5 Petitioner has now filed a motion to proceed in forma pauperis. Examination of the in
6 forma pauperis application reveals that petitioner is unable to afford the costs of suit.
7 Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C.
8 § 1915(a).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's motion for extension of time (ECF No. 11) is granted;
- 11 2. Petitioner shall file the petition for writ of habeas corpus on or before November 9,
12 2013; and
- 13 3. Petitioner's motion to proceed in forma pauperis (ECF No. 8) is granted.

14 Dated: October 8, 2013

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17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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