

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 ERHAN KAYIK,
5 Plaintiff,

6 v.

7 RALPH M. DIAZ,
8 Defendant.

Case No. 12-cv-05907-TEH

**ORDER GRANTING MOTION FOR
LEAVE TO FILE AMENDED
PETITION; ORDER TO SHOW
CAUSE**

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10 On January 8, 2015, this Court set a briefing schedule for Petitioner Erhan Kayik's
11 motion for leave to file an amended habeas petition to include newly exhausted claims.
12 Petitioner filed a timely motion on February 9, 2015, contending that the newly exhausted
13 claims relate back to the previously exhausted and timely filed claims, and that leave to
14 amend should therefore be granted.

15 Respondent Ralph M. Diaz was ordered to file an opposition or statement of non-
16 opposition on or before February 23, 2015. The Court construes his failure to file either
17 document as a statement of non-opposition to Petitioner's contention that the newly
18 exhausted claims relate back to the previously exhausted claims.

19 Petitioner's motion for leave to file an amended petition is therefore GRANTED as
20 unopposed. Petitioner shall file his amended petition on or before **March 2, 2015**.

21 In addition, because it does not "appear[] from the application," see Ex. A to Feb. 9,
22 2015 McCarthy Decl., that Petitioner is not entitled to habeas relief, the Court hereby
23 orders Respondent "to show cause why the writ should not be granted." 28 U.S.C. § 2243.
24 Accordingly, IT IS FURTHER ORDERED that:

25 1. On or before **May 4, 2015**, Respondent shall file and serve an answer showing
26 cause why this Court should not issue a writ of habeas corpus. Respondent's answer shall
27 conform in all respects to Rule 5 of the Rules Governing § 2254 cases. In addition,
28 Respondent shall file and serve with his answer a copy of all portions of the administrative

1 record that have been transcribed previously and that are relevant to a determination of the
2 issues presented by the petition.


3 2. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
4 with the Court and serving it on Respondent on or before **June 5, 2015**.

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6 **IT IS SO ORDERED.**

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8 Dated: 02/25/15



THELTON E. HENDERSON
United States District Judge

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