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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARTIN TAPIA REYES,  
Petitioner,  
v.  
K. SELBEL,  
Respondent.

Case No. [17-cv-04190-SI](#)

**ORDER ON INITIAL REVIEW**

Re: Dkt. Nos. 1, 6

Martin Tapia Reyes, an inmate at Deuel Vocational Institution in Tracy, California, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

**BACKGROUND**

The petition and attachments thereto provide the following information: Reyes was convicted in 2010 in Santa Cruz County Superior Court of robbery and active participation in a criminal street gang, with sentence enhancements for prior convictions. On appeal, the conviction for active participation in a criminal street gang apparently was vacated. *See* Docket No. 1-2 at 20, 31. After he was resentenced, Reyes appealed again. The California Court of Appeal issued its decision on May 26, 2015, and the California Supreme Court denied Reyes' petition for review on August 12, 2015. He currently is serving a sentence of 25 years to life, plus 10 years, in prison.

Reyes' federal petition for writ of habeas corpus was stamped "received" at the courthouse on July 19, 2017, and stamped "filed" on July 24, 2017. Docket No. 1 at 1. The petition has a signature date of July 14, 2017, and came to the court in an envelope post-marked July 17, 2017.



1 **CONCLUSION**

2 Good cause appearing therefor,

3 1. The clerk shall serve a copy of this order and the petition upon respondent and  
4 respondent’s attorney, the Attorney General of the State of California. The clerk shall also serve a  
5 copy of this order on petitioner.

6 2. Respondent must file and serve upon petitioner, on or before **November 10, 2017**,  
7 a motion to dismiss the petition or a notice that respondent is of the opinion that a motion to  
8 dismiss is unwarranted.

9 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an  
10 opposition with the court and serving it upon respondent on or before **December 8, 2017**.

11 4. Respondent may file and serve a reply on or before **December 22, 2017**.

12 5. The motion will be deemed submitted as of the date the reply brief is due. No  
13 hearing will be held on the motion. If respondent notifies the court that a motion to dismiss is  
14 unwarranted or the motion to dismiss is decided against respondent, the court will then determine  
15 whether to require an answer to the petition.

16 6. Petitioner’s application to proceed *in forma pauperis* is GRANTED. Docket No. 6.

17 **IT IS SO ORDERED.**

18 Dated: September 1, 2017

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21 SUSAN ILLSTON  
22 United States District Judge  
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United States District Court  
Northern District of California