

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 TOMMY BELL,

No. C 08-01493 CW (PR)

4                                    Petitioner,

ORDER LIFTING STAY AND  
DIRECTING RESPONDENT TO SHOW  
CAUSE WHY THE WRIT SHOULD NOT  
BE GRANTED

5                                    v.

6 BOB HOREL, Warden,

7                                    Respondent.  
8 \_\_\_\_\_/

9                                    Petitioner, a state prisoner, has filed this petition for a  
10 writ of habeas corpus pursuant to 28 U.S.C. § 2254.

11                                    On August 21, 2008, the Court ordered Respondent to show cause  
12 why the petition should not be granted, or to file a dispositive  
13 motion if appropriate. On January 6, 2009, Respondent filed a  
14 motion to dismiss the petition as not fully exhausted. Petitioner  
15 filed a request for a stay of proceedings while he returned to  
16 state court to exhaust his administrative remedies.<sup>1</sup>

17                                    On January 28, 2009, the Court denied Respondent's motion to  
18 dismiss and granted Petitioner's request for a stay.

19                                    On June 10, 2009, Petitioner informed the Court that his state  
20 proceedings had concluded, and he filed his first amended habeas  
21 petition containing his exhausted claims. He notes that the  
22 California Supreme Court denied his state habeas petition on May  
23 13, 2009.

24                                    Before the Court is Petitioner's implied motion for leave to  
25 file his first amended petition.  
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<sup>1</sup> Petitioner's motion to stay was filed as part of the appendix  
to his petition. (Pet. at 27.)

1 Good cause appearing, the Court lifts the stay and GRANTS  
2 Petitioner leave to file his first amended petition. The Clerk of  
3 the Court is directed to mark Petitioner's first amended petition  
4 as filed on June 10, 2009, the date it was received.

5 The Clerk of the Court shall REOPEN this case and serve a copy  
6 of this Order and the first amended petition and all attachments  
7 thereto upon Respondent and Respondent's attorney, the Attorney  
8 General of the State of California. The Clerk shall also serve a  
9 copy of this Order on Petitioner at his most current address.

10 Respondent shall file with this Court and serve upon  
11 Petitioner, within sixty (60) days of the issuance of this Order,  
12 an answer conforming in all respects to Rule 5 of the Rules  
13 Governing Section 2254 Cases, showing cause why a writ of habeas  
14 corpus should not be issued. Respondent shall file with the answer  
15 a copy of all portions of the state trial record that have been  
16 transcribed previously and that are relevant to a determination of  
17 the issues presented by the petition.

18 If Petitioner wishes to respond to the answer, he shall do so  
19 by filing a traverse with the Court and serving it on Respondent  
20 within thirty (30) days of his receipt of the answer. Otherwise,  
21 the petition will be deemed submitted and ready for decision thirty  
22 days after the date Petitioner is served with Respondent's answer.

23 Petitioner is reminded that all communications with the Court,  
24 whether by way of formal legal motions or informal letters, must be  
25 served on Respondent by mailing a true copy of the document to  
26 Respondent's counsel.

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Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than seven (7) days prior to the deadline sought to be extended.

IT IS SO ORDERED.

Dated: 6/30/09



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 TOMMY BELL,  
5 Plaintiff,

Case Number: CV08-01493 CW

**CERTIFICATE OF SERVICE**

6 v.

7 BOB HOREL et al,  
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Michele Joette Swanson  
16 CA State Attorney General's Office  
17 455 Golden Gate Avenue, Suite 11000  
18 San Francisco, CA 94102-7004

19 Tommy Bell V-09957  
20 3A05-141  
21 Corcoran State Prison  
22 P.O. Box 3461  
23 Corcoran, CA 93212

24 Warden  
25 Corcoran State Prison  
26 P.O. Box 8800  
27 Corcoran, CA 93212

28 Dated: June 30, 2009

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk