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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5 OAKLAND DIVISION  
6

7 REGINALD E. MARTIN,

8 Petitioner,

No. C 12-1881 PJH (PR)

9 vs.

**ORDER TO SHOW CAUSE**

10 R. BARNES, Warden,

11 Respondent.  
12 \_\_\_\_\_/

13 Petitioner, a California prisoner currently incarcerated at the California Correctional  
14 Center in Susanville, has filed a pro se petition for a writ of habeas corpus pursuant to 28  
15 U.S.C. § 2254. The court ordered respondent to show cause regarding four claims in the  
16 petition. Respondent has filed a response noting that petitioner has another earlier pending  
17 case, No. C 11-3075 PJH (PR), challenging the same conviction. That case raises two  
18 other claims and respondent has already filed an answer to the petition. Respondent notes  
19 that petitioner indicated in the petition in No. C 12-1881 PJH (PR) that he had not  
20 previously filed a petition in federal court and there was no petition pending in federal court.  
21 No. C 12-1881 PJH (PR), Docket No. 1 at 14.

22 Where a new pro se habeas petition is filed before the adjudication of a prior petition  
23 is complete, the new petition should be construed as a motion to amend the pending  
24 petition rather than as a successive application. *Woods v. Carey*, 525 F.3d 886, 890 (9th  
25 Cir. 2008) (holding that petitioner's second pro se habeas petition was not successive  
26 under § 2244 and should instead be construed as a motion to amend because it was filed  
27 while his previous petition was still pending before the district court). The district court then  
28 has the discretion to decide whether the motion to amend should be granted. *Woods*, 525

1 F.3d at 890.

2 Respondent argues that the motion to amend should be denied as petitioner's  
3 misrepresentation on the new petition resulted in a new case being opened and petitioner  
4 has been dilatory in belatedly changing all of his claims that are not related to the claims in  
5 the earlier petition.<sup>1</sup>

6 Petitioner shall show cause by **May 6, 2013**, why the habeas action in No. C 12-  
7 1881 PJH (PR), should not be construed as a motion to amend and why it should not  
8 thereafter be denied leaving only the earlier case, No. C 11-3075 PJH (PR), to proceed.

9 **IT IS SO ORDERED.**

10 Dated: April 9, 2013.

  
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PHYLLIS J. HAMILTON  
United States District Judge

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27 <sup>1</sup> The court denied petitioner's motion for a stay in the earlier case as the motion was  
28 simply a few boilerplate sentences and provided no information about what claims were to be  
exhausted or even if the process had begun. No. C 11-3075 PJH (PR), Docket No. 4.