

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RYAN CHILCOTE,

Petitioner,

V.

S. SHERMAN, Warden,

Respondent.

Case No. 17cv0061 GPC (PCL)

ORDER REOPENING CASE AND SETTING BRIEFING SCHEDULE

On January 6, 2017, Petitioner, proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In its January 12, 2017 Order, the Court dismissed this case without prejudice because Petitioner failed to satisfy the filing fee requirement, failed to name a proper respondent, and failed to allege exhaustion of state judicial remedies. Petitioner was instructed that to have this case reopened he had to file a First Amended Petition no later than March 20, 2017. The Court then granted Petitioner an extension of time, to May 17, 2017.

On April 6, 2017, Petitioner filed a First Amended Petition pursuant to this Court’s Order, and on April 25, 2017, Petitioner paid the filing fee. Based on this Court’s review of the First Amended Petition, the Court **ORDERS** that this case be reopened. Further, in accordance with Rule 4 of the rules governing petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the First Amended

1 Petition, **IT IS ORDERED** that:

2 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a
3 copy of this Order on the Attorney General for the State of California, or her authorized
4 agent; and (b) serve a copy of this Order on Petitioner.

5 2. If Respondent contends the Petition can be decided without the Court's
6 reaching the merits of Petitioner's claims (e.g., because Respondent contends Petitioner
7 has failed to exhaust any state remedies as to any ground for relief alleged in the Petition,
8 or that the Petition is barred by the statute of limitations, or that the Petition is subject to
9 dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are
10 procedurally defaulted, or that Petitioner is not in custody), Respondent shall file a
11 motion to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than
12 **July 10, 2017**. The motion to dismiss shall not address the merits of Petitioner's claims,
13 but rather shall address all grounds upon which Respondent contends dismissal without
14 reaching the merits of Petitioner's claims is warranted.¹ At the time the motion to
15 dismiss is filed, Respondent shall lodge with the Court all records bearing on
16 Respondent's contention in this regard. A hearing date is not required for the motion to
17 dismiss.

18 3. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if
19 any, to the motion no later than **August 10, 2017**. At the time the opposition is filed,
20 Petitioner shall lodge with the Court any records not lodged by Respondent which
21 Petitioner believes may be relevant to the Court's determination of the motion.

22 4. Unless the Court orders otherwise, Respondent shall not file a reply to
23 Petitioner's opposition to a motion to dismiss. If the motion is denied, the Court will
24 afford Respondent adequate time to respond to Petitioner's claims on the merits.

25 5. If Respondent does not contend that the Petition can be decided without the

27 28 ¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief
alleged in the Petition, the motion to dismiss shall also specify the state remedies still available to
Petitioner.

1 Court reaching the merits of Petitioner's claims, Respondent shall file and serve an
2 answer to the Petition, as well as points and authorities in support of such answer, no later
3 than July 10, 2017. At the time the answer is filed, Respondent shall lodge with the
4 Court all records bearing on the merits of Petitioner's claims. The lodgments shall be
5 accompanied by a notice of lodgment which shall be captioned "**Notice of Lodgment in**
6 **28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk's Office.**" Respondent
7 shall not combine separate pleadings, orders or other items into a combined lodgment
8 entry. Each item shall be numbered separately and sequentially.

9 6. Petitioner may file a traverse to matters raised in the answer no later than
10 August 10, 2017. Any traverse by Petitioner (a) shall state whether Petitioner admits or
11 denies each allegation of fact contained in the answer; (b) shall be limited to facts or
12 arguments responsive to matters raised in the answer; and (c) shall not raise new grounds
13 for relief that were not asserted in the Petition. Grounds for relief withheld until the
14 traverse will not be considered. No traverse shall exceed ten (10) pages in length absent
15 advance leave of Court for good cause shown.

16 7. A request by a party for an extension of time within which to file any of the
17 pleadings required by this Order should be made in advance of the due date of the
18 pleading, and the Court will grant such a request only upon a showing of good cause.
19 Any such request shall be accompanied by a declaration under penalty of perjury
20 explaining why an extension of time is necessary.

21 8. Unless otherwise ordered by the Court, this case shall be deemed submitted
22 on the day following the date Petitioner's opposition to a motion to dismiss and/or his
23 traverse is due.

24 9. Every document delivered to the Court must include a certificate of service
25 attesting that a copy of such document was served on opposing counsel (or on the
26 opposing party, if such party is not represented by counsel). Any document delivered to
27 the Court without a certificate of service will be returned to the submitting party and
28 disregarded by the Court.

10. Petitioner shall immediately notify the Court and counsel for Respondent of any change of Petitioner's address. If Petitioner fails to keep the Court informed of where Petitioner may be contacted, this action will be subject to dismissal for failure to prosecute.

IT IS SO ORDERED.

Dated: May 22, 2017


Hon. Peter C. Lewis
United States Magistrate Judge