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

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11 RAMON BENITEZ,

12 Petitioner,

13 v.

14 CHARLES W. CALLAHAN, Warden,

15 Respondent.

Case No.: 17cv1926 CAB (JMA)

**(1) NOTICE OF OPPORTUNITY TO  
CONSENT TO MAGISTRATE  
JUDGE JURISDICTION  
(28 U.S.C. § 636(c), F.R.C.P. 73), and**

**(2) ORDER REOPENING CASE AND  
SETTING BRIEFING SCHEDULE**

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18 On September 21, 2017, Petitioner, proceeding pro se, submitted a Petition for  
19 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In its September 26, 2017 Order,  
20 the Court dismissed this case without prejudice because Petitioner failed to satisfy the  
21 filing fee requirement. Petitioner was instructed that to have this case reopened he had to  
22 pay the filing fee or provide adequate proof of his inability to pay, no later than  
23 November 30, 2017.

24 It has come to the Court's attention that Petitioner has paid the \$5.00 filing fee. As  
25 such, based on this Court's review of the Petition, the Court **ORDERS** that this case be  
26 reopened. Further, in accordance with Rule 4 of the rules governing petitions for a writ  
27 of habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the  
28 Petition, **IT IS ORDERED** that:

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

4           2.     Respondent must file a “Notice of Appearance” no later than **October 25,**  
5 **2017.**

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

19           4.     If Respondent files a motion to dismiss, Petitioner shall file his opposition, if  
20 any, to the motion no later than **January 16, 2018.** At the time the opposition is filed,  
21 Petitioner shall lodge with the Court any records not lodged by Respondent which  
22 Petitioner believes may be relevant to the Court’s determination of the motion.

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

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

1           6.     If Respondent does not contend that the Petition can be decided without the  
2 Court reaching the merits of Petitioner’s claims, Respondent shall file and serve an  
3 answer to the Petition, as well as points and authorities in support of such answer, no later  
4 than **December 15, 2017**. At the time the answer is filed, Respondent shall lodge with  
5 the Court all records bearing on the merits of Petitioner’s claims. The lodgments shall be  
6 accompanied by a notice of lodgment which shall be captioned “**Notice of Lodgment in**  
7 **28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk’s Office.**” Respondent  
8 shall not combine separate pleadings, orders or other items into a combined lodgment  
9 entry. Each item shall be numbered separately and sequentially.

10           7.     Petitioner may file a traverse to matters raised in the answer no later than  
11 **January 16, 2018**. Any traverse by Petitioner (a) shall state whether Petitioner admits or  
12 denies each allegation of fact contained in the answer; (b) shall be limited to facts or  
13 arguments responsive to matters raised in the answer; and (c) shall not raise new grounds  
14 for relief that were not asserted in the Petition. Grounds for relief withheld until the  
15 traverse will not be considered. No traverse shall exceed ten (10) pages in length absent  
16 advance leave of Court for good cause shown.

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

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

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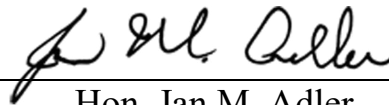
1 the Court without a certificate of service will be returned to the submitting party and  
2 disregarded by the Court.

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

7 12. Petitioner has consented to proceed before a United States Magistrate Judge.  
8 Respondent must execute and return either a "Consent to Exercise of Jurisdiction by a  
9 United States Magistrate Judge and Order of Reference" or a "Notice of Intent to Proceed  
10 before District Judge" to the Clerk of Court on or before **December 1, 2017**. The parties  
11 are free to withhold consent without adverse substantive consequences. The Clerk of  
12 Court must send the appropriate Southern District forms to Respondent along with this  
13 Order.

14 **IT IS SO ORDERED.**

15 Dated: October 5, 2017



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Hon. Jan M. Adler  
United States Magistrate Judge