

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SAYSINH P. KHIANTHALAT,

Petitioner,

-vs-

Case No. 8:13-CV-2702-T-30TGW

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

ORDER

Before the Court are Petitioner's Motion for Leave to Amend Complaint (Dkt. 8), and Respondent's Motion for Extension of Time to Respond to [original] Federal Habeas Petition (Dkt. 9). It appears that Petitioner moves to amend his petition to raise one additional claim, to wit, Ground Five (see Dkt. 8-1 at pp. 38-39).

Rule 11 of the Rules Governing Section 2254 Proceedings authorizes district courts to apply the Federal Rules of Civil Procedure consistent with the Rules Governing Section 2254 Proceedings. Rule 15 of the Federal Rules of Civil Procedure governs proposed amendments to a complaint. Rule 15(a) states:

Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

Because Petitioner filed his motion to amend his petition approximately two months after he submitted his initial petition, he may amend his petition "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(1)-(2).

The Court concludes that because Respondent has not filed a response as of this date, and because the proposed additional claim appears to be timely under the one-year limitations period set forth in 28 U.S.C. § 2244(d)(1), the motion for leave to file an amended petition should be granted.

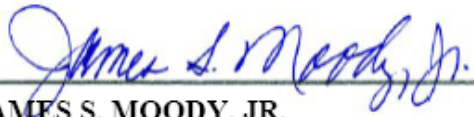
ACCORDINGLY, the Court **ORDERS** that:

1. Petitioner's Motion for Leave to Amend Complaint (Dkt. 8) is **GRANTED**.
2. The **Clerk** shall accept for filing and docket Plaintiff's proposed amended petition (Dkt. 8-1) as "Petitioner's Amended Petition."
3. Respondent shall have **SIXTY (60) DAYS** from the date of this Order to file a response to the Amended Petition in accordance with the Court's November 27, 2013, Order (see Dkt. 7).

4. Petitioner may file a reply within **THIRTY (30) DAYS** from the date on which Respondent serves the response. The reply shall not exceed **twenty-five (25) pages**.

5. Respondent's Motion for Extension of Time to Respond to [original] Federal Habeas Petition (Dkt. 9) is **DENIED** as moot.

DONE and **ORDERED** in Tampa, Florida on January 30, 2014.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copy to: Counsel of Record
Petitioner *pro se*