

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

WILCY ERNEST MONCEAUX, SR. : **DOCKET NO. 15-cv-2139**
D.O.C. # 593048

VERSUS : **JUDGE TRIMBLE**

DARREL VANNOY : **MAGISTRATE JUDGE KAY**

ORDER

Before the court are the petitioner's motions for an extension of time to file his reply and for a more definite statement. Docs. 26, 27. The basis for both of these motions is the petitioner's contention that he does not have in his possession the record relied upon by the state.

The petitioner alleges that he is entitled to copies of all exhibits filed by the respondent, pursuant to Rule 5 of the Rules Governing Section 2254 Cases. Doc. 27, att. 1, pp. 3–4 (citing *Thompson v. Greene*, 427 F.3d 263 (4th Cir. 2005) and *Pindale v. Nunn*, 248 F.Supp.2d 361 (D.N.J. 2003)). As the courts noted in both *Thompson* and *Pindale*, Rule 5 does **not** explicitly require service of the record in a § 2254 case. *Thompson*, 427 F.3d at 268–69; *Pindale*, 248 F.Supp.2d at 364; *see also Norris v. Crosby*, 2007 WL 128822, *1–*3 (M.D. Fla. Jan. 12, 2007) (declining to require service of record upon petitioner). However, the Fifth Circuit has ruled that when the respondent attaches exhibits to the answer, “there can be little dispute that those exhibits must be served together with the answer itself on the habeas petitioner.” *Sixta v. Thaler*, 615 F.3d 569, 572 (5th Cir. 2010).

Here our service order only required that the respondent file with this court a certified copy of the state court record and related documents within the same filing deadline for providing his answer. Doc. 10, pp. 3–4. Instead, the respondent filed the record as exhibits attached to his answer. *See* Doc. 23 and attachments. Accordingly, the record is now an exhibit to the instant case and the respondent must serve it upon the petitioner.

Accordingly, the Motion for a More Definite Statement [doc. 27] is **GRANTED**, to the extent that the respondent must also file and serve upon the petitioner all exhibits attached to the answer in addition to an index of same within **30 days**. The Motion for an Extension of Time [doc. 26] is also **GRANTED** and the petitioner is given an additional **90 days** from receipt of the respondent's statement to file his reply.

THUS DONE this 27th day of September, 2016.



KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE