UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON SZYDLEK,

Plaintiff,

Case No. 12-cv-14670
Hon. Matthew F. Leitman

v.

JEFFREY LARSON,

Respondent.
_____/

ORDER GRANTING PETITIONER'S MOTION TO AMEND PETITION (ECF #27); DEEMING AMENDED PETITION FILED; AND DENYING PETITIONER'S MOTION TO EXTEND TIME AS MOOT (ECF #28)

Petitioner, Jason Szydlek, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (the "Original Petition," ECF #1). Respondent filed an answer to the petition on February 21, 2014 (the "Answer," ECF #23). Before the Court are two motions: (1) Petitioner's motion to file an amended petition (the "Motion to Amend," ECF #27), and (2) Petitioner's motion for an extension of time to file a reply (the "Motion for Extension of Time," ECF #28).

A party who moves to amend a pleading "shall attach the proposed amended pleading to the motion." E.D. Mich. L.R. 15.1. Petitioner did not attach the proposed amended pleading to his Motion to Amend. However, the Motion to Amend supplements Petitioner's claims in the Original Petition with additional arguments and also presents what appears to be a newly-exhausted claim regarding

an alleged denial of access to the courts. The Court will therefore (1) construe the Motion to Amend as the proposed amended pleading, and (2) deem the proposed amended pleading to incorporate the Original Petition by reference.

Federal Rule of Civil Procedure 15 provides that the Court should freely allow a party to amend a pleading when justice so requires. Fed. R. Civ. P. 15(a)(2). This standard is satisfied here. As noted above, the Motion to Amend contains what appears to be a claim that Petitioner exhausted after the filing of his Original Petition. Moreover, Respondent has not filed a response to the Motion to Amend, and the Court finds that Respondent will not be unduly prejudiced by allowing Petitioner to amend the Original Petition.

Accordingly, the Court **GRANTS** Petitioner's Motion to Amend (ECF #27). The Court deems Petitioner's Amended Petition to have been filed as of the date of this Order. Petitioner therefore need not re-file an amended pleading. For purposes of this action, the Amended Petition shall be deemed to include the claims asserted in (1) the Original Petition (ECF #1 at Pg. ID 1-473), and (2) the Motion to Amend (ECF #27, Pg. ID 1554-1883). To be clear, all claims asserted in the Original Petition and the Motion to Amend are before the Court in a single Amended Petition.

Respondent may file an amended responsive pleading, along with any additional relevant state court records, by no later than May 4, 2015. Respondent need not repeat arguments it made in its Answer. In its amended responsive pleading, Respondent should address only those arguments and claims that Petitioner raised for the first time in the Motion to Amend. Petitioner may file a reply brief within thirty (30) days after the amended responsive pleading is filed.

Finally, the Court **DENIES** Petitioner's Motion for Extension of Time (ECF #28) as moot.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 5, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113