

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FORREST COX,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

8:23CV423

MEMORANDUM AND ORDER

This matter is before the Court on the Amended Joint Motion for Case Progression Order filed by Petitioner, by and through his counsel, Jerry M. Hug, with counsel for Respondent, Austin Relph. [Filing No. 17](#). Counsel ask the Court to amend the progression deadlines in the Court's previous Memorandum and Order, [Filing No. 16](#), due to counsel for Petitioner needing additional time to review the state court record. Upon consideration,

IT IS THEREFORE ORDERED that:

1. The Amended Joint Motion for Case Progression Order, [Filing No. 17](#), is granted.
2. Petitioner must file an amended petition no later than **September 27, 2024**.
3. Respondent must file a motion for summary judgment or state court records in support of an answer no later than **October 28, 2024**.
4. If Respondent elects to file a motion for summary judgment, the following procedures must be followed by Respondent and Petitioner:
 - A. The motion for summary judgment must be accompanied by a separate brief, submitted at the time the motion is filed.

- B. The motion for summary judgment must be supported by any state court records that are necessary to support the motion. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Motion for Summary Judgment."
- C. Copies of the motion for summary judgment, the designation, including state court records, and Respondent's brief must be served on Petitioner except that Respondent is only required to provide Petitioner with a copy of the specific pages of the record that are cited in Respondent's motion and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, Respondent should inform the Court by filing a notice stating that no reply brief will be filed and the motion is therefore fully submitted for decision.

F. If the motion for summary judgment is denied, Respondent must file an answer, a designation and a brief that complies with the agreed-upon procedure set forth below. The documents must be filed no later than 30 days after the denial of the motion for summary judgment.

5. If Respondent elects to file an answer, the following procedures must be followed by Respondent and Petitioner:

A. By **October 28, 2024**, Respondent must file all state court records that are relevant to the cognizable claims. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Answer."

B. No later than 30 days after the relevant state court records are filed, Respondent must file an answer. The answer must be accompanied by a separate brief, submitted at the time the answer is filed. Both the answer and the brief must address all matters germane to the case including, but not limited to, the merits of Petitioner's allegations that have survived initial review, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition.

C. Copies of the answer, the designation, and Respondent's brief must be served on Petitioner at the time they are filed with the Court *except* that Respondent is only required to provide Petitioner with a

copy of the specific pages of the designated record that are cited in Respondent's answer and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.

- D. No later than 30 days after Respondent's brief is filed, Petitioner must file and serve a brief in response.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, Respondent should inform the Court by filing a notice stating that no reply brief will be filed and that the merits of the petition are therefore fully submitted for decision.

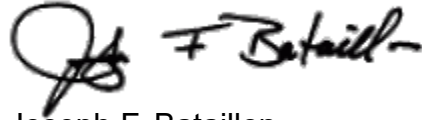
6. No discovery shall be undertaken without leave of the Court.

7. The Clerk of the Court is directed to terminate the previous progression deadlines set forth in [Filing No. 16](#) and set the following pro se case management deadlines in this case using the following text:

- a. **September 27, 2024**: deadline for Petitioner to file amended petition.
- b. **October 28, 2024**: deadline for Respondent to file state court records in support of answer or motion for summary judgment.
- c. **November 27, 2024**: check for Respondent's answer and separate brief.

Dated this 30th day of August, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large initial "J" and a horizontal line extending from the end.

Joseph F. Bataillon
Senior United States District Judge