

1 claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some
2 merit.”) Accordingly, it makes sense to defer ruling on the *Martinez* issue until the merits of the
3 grounds are briefed in respondents' answer, Lopez's reply, and respondents' response to Lopez's
4 reply.

5 Unlike *Martinez*, which implicates only procedurally defaulted ineffective assistance of trial
6 counsel claims, a claim of actual innocence can be asserted as a ground to excuse the procedural
7 default or the untimeliness of virtually any claim. See *McQuiggin v. Perkins*, 569 U.S. 383, 386
8 (2013) (“We hold that actual innocence, if proved, serves as a gateway through which a petitioner
9 may pass whether the impediment is a procedural bar . . . or . . . expiration of the statute of
10 limitations.”). Indeed, it appears as if Lopez to intends to make such an argument. See ECF No.
11 161, p. 3 (“Lopez intends to argue that his innocence of the offense excuses any procedural
12 impediments to the consideration of the claims in his petition.”). Cf. *Castillo v. Filson*, Case No.
13 2:04-cv-00868-RCJ-GWF, Order [on Motion to Dismiss] at 27 (filed March 2, 2016), ECF No. 184
14 at 27 (deferring the briefing on actual innocence with respect to two particular claims). This court is
15 unable to discern how considerations of judicial economy or economy of the parties call for a
16 deferral of briefing on the question of actual innocence.

17 IT IS THEREFORE ORDERED that petitioner's “Motion for Extension of Time to Brief
18 Actual Innocence and *Martinez v. Ryan*, 566 U.S. 1 (2012)” is GRANTED in part and DENIED in
19 part. Subsequent to this court's decision on respondents' motion to dismiss (ECF No. 139),
20 respondents' answer on the merits with respect to any remaining procedurally defaulted ineffective
21 assistance of trial counsel claims shall address both the merits of the claim and petitioner's cause to
22 overcome state procedural bars based on *Martinez*. Petitioner shall respond accordingly in his reply,
23 and respondents may reply in their response to petitioner's reply. Petitioner's request to defer
24 briefing with respect to actual innocence is denied.

25 IT IS FURTHER ORDERED that respondents' unopposed motion for an extension of time
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1 (ECF No. 167) is GRANTED. Respondents shall have until **March 30, 2018**, to file and serve their
2 reply to in support of their motion to dismiss (ECF 139) and response to petitioner's motion for leave
3 to conduct discovery and evidentiary hearing (ECF 166).

4 IT IS FURTHER ORDERED that, in all other respects, the scheduling order entered on June
5 28, 2016 (ECF No. 124), shall remain in effect.

6 DATED: *FEBRUARY 6, 2018.*

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9 UNITED STATES DISTRICT JUDGE

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