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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOHN JOSEPH SEKA,

Petitioner

v.

CALVIN JOHNSON, WARDEN, *et al.*,

Respondents.

Case No.: 2:22-cv-02184-RFB-BNW

**Order Directing Service of Petition and  
Setting Briefing Schedule**

John Joseph Seka challenges his conviction in Eighth Judicial District Court (Clark County), Nevada by a jury of first-degree murder, second-degree murder, and two counts of robbery. The Ninth Circuit Court of Appeals granted his application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition and transferred the proposed petition to this Court. The Court has conducted a preliminary review of the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive petitions). If

1 petitioner is aware of any claim not included in his petition, he should notify the court of that as  
2 soon as possible, perhaps by means of a motion to amend his petition to add the claim.

3 **IT IS THEREFORE ORDERED** that the Clerk of Court electronically **SERVE** the  
4 petition (ECF No. 2)<sup>1</sup> on respondents.

5 **IT IS FURTHER ORDERED** that the Clerk of Court add Aaron D. Ford, Nevada  
6 Attorney General, as counsel for respondents and provide respondents an electronic copy of all  
7 items previously filed in this case by regenerating the Notice of Electronic Filing to the office of  
8 the Attorney General only.

9 **IT IS FURTHER ORDERED** that respondents file a response to the petition, including  
10 potentially by motion to dismiss, within **90 days** of service of the petition, with any requests for  
11 relief by petitioner by motion otherwise being subject to the normal briefing schedule under the  
12 local rules. Any response filed is to comply with the remaining provisions below, which are entered  
13 pursuant to Habeas Rule 5.

14 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this  
15 case be raised together in a single consolidated motion to dismiss. In other words, the court does  
16 not wish to address any procedural defenses raised herein either in seriatum fashion in multiple  
17 successive motions to dismiss or embedded in the answer. Procedural defenses omitted from such  
18 motion to dismiss will be subject to potential waiver. Respondents should not file a response in  
19 this case that consolidates their procedural defenses, if any, with their response on the merits,  
20 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
21 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will do so within  
22 the single motion to dismiss not in the answer; and (b) they will specifically direct their argument

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<sup>1</sup> The petition itself is actually found at ECF No. 2 at 78-120.

1 to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406 F.3d 614, 623-  
2 24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, should be included with  
3 the merits in an answer. All procedural defenses, including exhaustion, instead must be raised by  
4 motion to dismiss.

5 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
6 specifically cite to and address the applicable state court written decision and state court record  
7 materials, if any, regarding each claim within the response as to that claim.

8 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the answer,  
9 motion to dismiss, or other response to file a reply or opposition, with any other requests for relief  
10 by respondents by motion otherwise being subject to the normal briefing schedule under the local  
11 rules.

12 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein  
13 by either petitioner or respondents be filed with a separate index of exhibits identifying the exhibits  
14 by number. The parties will identify filed CM/ECF attachments by the number of the exhibit in  
15 the attachment. Each exhibit will be filed as a separate attachment.

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