

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ENRIQUE MORENO,

Petitioner,

v.

No. 2:22-cv-00683-KWR-JHR

RICK MARTINEZ, *Warden, Otero County Prison
Facility*; and THE STATE OF NEW MEXICO,

Respondents.

ORDER TERMINATING MOTION FOR EXTENSION AS MOOT


THIS MATTER is before the Court on *pro se* Petitioner Enrique Moreno’s Motion for Extension of Time, [Doc. 13]. In September 2022, Moreno filed a petition with the Court indicating his interest in pursuing habeas corpus relief. *See* [Doc. 1]. In November 2022, he filed an amended petition seeking, pursuant to 28 U.S.C. § 2254, to “vacate, set aside or correct” his sentence, “or reverse, remand and grant . . . a new trial” or “an evidentiary hearing[.]” [Doc. 4, p. 14]. On August 3, 2023, the Court directed the New Mexico Attorney General, representing Respondents, to answer Moreno’s petition within forty-five days. [Doc. 8, p. 1]. That order also allowed Moreno to reply to the Attorney General’s answer within twenty-one days of the answer being filed. [Doc. 8, p. 2].

The Attorney General timely answered on September 18, 2023, the last day permitted by the Court’s deadline. *See* [Doc. 12]. The same day, Moreno moved for an extension of time to reply, stating “I have not received the answer for my petition” because of delays in his prison’s mail system and that it would be difficult to timely reply. [Doc. 13, pp. 1–3]. The Attorney General did not respond to Moreno’s motion. Moreno then mailed a reply on October 9, 2023, twenty-one days after the answer was filed. *See* [Doc. 14, p. 14]. He also declared that he

deposited his reply in the mail on October 9 and sent it to the Attorney General via first-class mail that day. [Doc. 14, p. 14]. The reply arrived at the courthouse on October 12, 2023, and was entered on the docket by the Clerk of Court that day. *See* [Doc. 14].

“A paper filed by an inmate confined in an institution is timely if deposited in the institution’s internal mailing system on or before the last day for filing.” R. Governing Sec. 2254 Cases 3(d). “Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 . . . which must set forth the date of deposit and state that first-class postage has been prepaid.” R. Governing Sec. 2254 Cases 3(d). Moreno’s reply was mailed within twenty-one days of the answer being filed, and the declaration at the end of his reply is in substantial compliance with these rules, so the reply is deemed timely. The Motion for Extension of Time is thus moot; the reply will be considered alongside Moreno’s petition and the Respondents’ answer.

For the reasons stated above, the Court **ORDERS** that Petitioner Enrique Moreno’s Motion for Extension of Time, [Doc. 13], be **TERMINATED AS MOOT**.


Hon. Jerry H. Ritter
United States Magistrate Judge