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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 NEIL GRENNING,

9 Petitioner,

10 v.

11 JAMES KEY,

12 Respondent.

CASE NO. 3:16-CV-05983-RJB-DWC

ORDER FOR SUPPLEMENTAL
BRIEFING

13 The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate
14 Judge David W. Christel. Petitioner Neil Grenning filed his federal habeas Petition seeking relief
15 from a state court conviction. *See* Dkt. 8. In his Petition, Petitioner raises nine grounds for relief.
16 *Id.* Respondent James Key filed an Answer arguing, in part, that Ground 5 of the Petition was
17 unexhausted and procedurally barred. Dkt. 16. Respondent did not provide additional arguments
18 regarding Ground 5 in the Answer. *See id.* Petitioner filed a Traverse asserting he exhausted
19 Ground 5 and also arguing the state court's adjudication of Ground 5 was contrary to clearly
20 established federal law. *See* Dkt. 24. Respondent filed a Reply reasserting that Ground 5 is
21 unexhausted, but also contending that Ground 5 is without merit and should be dismissed. Dkt.
22 26.

23 The Court has reviewed the relevant record and finds the record indicates Petitioner
24 exhausted Ground 5 in his first state personal restraint petition. *See* Dkt. 17, Exhibit 54, pp. 5-6,

1 Exhibit 60, pp. 1, 10-12. As Petitioner has likely exhausted Ground 5, the Court will also review
2 Ground 5 on the merits.

3 In the Reply, Respondent provided some argument that Ground 5 should be dismissed
4 because it lacks merit. Dkt. 26. However, it is not clear if Respondent fully briefed Ground 5 on
5 the merits. *See id.* Further, as Respondent raised this argument for the first time in his Reply,
6 Petitioner was not afforded an opportunity to respond to Respondent's arguments regarding
7 whether Ground 5 should be dismissed on the merits.¹

8 To ensure the parties are provided with an adequate opportunity to brief Ground 5 on the
9 merits, the Court orders the following:

- 10 • Respondent is directed to file, on or before March 1, 2018, a supplemental answer
11 addressing Ground 5 on the merits. If Respondent wishes to rely on the briefing provided in
12 the Reply, he may file notice with the Court stating as such.
- 13 • Petitioner may file a supplemental traverse (response to the supplemental answer)
14 addressing only the new arguments raised by Respondent related to Ground 5 on or before
15 March 29, 2018.
- 16 • Respondent may file a reply to the supplemental traverse on or before April 6, 2018.

17 The Clerk of Court is directed to re-note the Petition for consideration for April 6, 2018.

18 Dated this 1st day of February, 2018.

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21 _____
22 David W. Christel
23 United States Magistrate Judge

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¹ While Petitioner provided briefing on the merits of Ground 5, he did not have the opportunity to respond to the new arguments raised in Respondent's Reply.