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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 JONATHAN MONTANA,) Case No. 25-cv-09717-TLT
10)
11) **RESPONSE TO ORDER TO**
12) **SHOW CAUSE; MEMORANDUM**
13) **OF POINTS AND AUTHORITIES**
14) **IN SUPPORT OF GOOD CAUSE**
15) **TO EXCUSE SERVICE DEFECT**
16) **AND AMEND CAPTION**
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30)
vs.
UNITED STATES OF AMERICA
JEFF MANCOMBER, SECRETARY,
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,
Defendant/Respondent,

I

INTRODUCTION

Jonathan Montana, by and through undersigned counsel, respectfully submits this Response to the Court's Order to Show Cause (ECF No. 16), dated December 18, 2025. The Court has ordered Petitioner to clarify service status and show cause why the Motion to Stay and Petition for Writ of Habeas Corpus should not be denied for failure to complete service.

Petitioner acknowledges that, due to a clerical error, the initial filings incorrectly named the "United States of America" as the Respondent rather than

1 the Secretary of the California Department of Corrections and Rehabilitation
2 (CDCR). However, the Petition and Motion to Stay were filed timely on
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4 November 11, 2025, prior to the AEDPA deadline of November 12, 2025.

5 Petitioner has previously served the State Attorney General, and has now
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7 served CDCR. As detailed below, Ninth Circuit precedent dictates that this
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9 technical correction "relates back" to the original filing date. Dismissal is
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11 unwarranted where the action was timely commenced, and the error was a
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13 curable technical defect. The Office of the Attorney General has addressed all
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15 these issues.¹

16 II

17 FACTUAL BACKGROUND

18 1. **Timely Filing:** Petitioner's one-year statute of limitations under 28

19 U.S.C. § 2244(d) was set to expire on November 12, 2025. On November
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21 11, 2025—one day prior to the deadline—Petitioner filed his Petition for
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23 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and a Motion to Stay
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25 and Hold in Abeyance.

26 2. **Clerical Error:** Due to an inadvertent clerical error in the drafting of the
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28 caption, the Respondent was identified as the "United States of America"

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30 ¹ Exhibit A: Redacted email from Michele Swanson, Supervising Deputy of the
Attorney General.

1 rather than the appropriate state custodian. Service was initially directed
2 to both the U.S. Attorney's Office and the California Attorney General.

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4 **3. Correction of Service:** Upon receipt of the Court's OSC, Petitioner
5 served the CDCR on December 22, 2025. The Office of the Attorney
6 General confirms receipt of its copy served on 12/03/2025.² Petitioner
7 also served the Motion to Stay and the Petition upon the Secretary of the
8 CDCR Certificate of Service is attached hereto as **Exhibit B**. The
9 previous service on the California Attorney General is attached as **Exhibit**
10 **C**.

14 III

15 ARGUMENT

17 **A. The Petition Was Timely Filed, and the Correction of the Respondent** 18 **"Relates Back" to the Original Filing Date.**

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20 The primary concern raised by the procedural posture is the expiration of
21 the AEDPA statute of limitations on November 12, 2025. However, under
22 Federal Rule of Civil Procedure 15(c) and controlling Ninth Circuit authority,
23 the correction of a miscaptioned respondent relates back to the date of the
24 original pleading.
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² See Exhibit A

1 In *Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996), the Ninth
2 Circuit held that the failure to name the proper respondent in a habeas petition is
3 a procedural/technical defect that can be cured by amendment and does not
4 require dismissal of the petition. The Court stated “we hold that the naming of
5 the California Director of Corrections as respondent does not destroy personal
6 jurisdiction in this case.” *Id.* at 896.
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10 Furthermore, under Fed. R. Civ. P. 15(c)(1)(C), an amendment changing
11 the captioned party against whom a claim is asserted relates back if the claim
12 arises out of the same conduct, transaction, or occurrence. Here, the substantive
13 claims (the constitutional challenges to Petitioner's conviction) remain identical.
14 The amendment serves only to identify the correct captioned Respondent. *See*
15 *Valdovinos v. McGrath*, 598 F.3d 568, 575 (9th Cir. 2010) (allowing
16 amendments to habeas petitions to relate back where the core facts and claims
17 remain consistent); *See also Mayle v. Felix*, 545 U.S. 644, 657, the Supreme
18 Court held that “claims added by amendment [must] arise from the same core
19 facts [] as the timely filed claims,” and must not be “separate in both time and
20 type from the originally raised episodes.”
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26 Because the original Petition was filed on November 11, 2025, and the
27 amendment relates back to that date, the action is not time-barred.
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1 **B. Dismissal Would Be an Unjustifiably Harsh Sanction Resulting in**
2 **Extreme Prejudice.**

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4 The Ninth Circuit has established a strong policy favoring the resolution
5 of cases on their merits, particularly in habeas corpus proceedings. Dismissing
6 this action for failure to name the correct, and previously served, respondent
7 initially would effectively be a dismissal with prejudice, as the AEDPA deadline
8 has now passed.
9

10
11 In *Efaw v. Williams*, 473 F.3d 1038, 1040-41 (9th Cir. 2007), the Ninth
12 Circuit held that when deciding whether to extend time for service under Rule
13 4(m), the district court must consider whether the statute of limitations would
14 bar the re-filed action. Where a dismissal would be time-barred, the court should
15 generally grant an extension to effectuate service to prevent a miscarriage of
16 justice.
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19
20 The delay in naming in the caption the correct State Respondent, where
21 the California Attorney has previously been served, has been brief, and has
22 caused no prejudice to the State's ability to defend the action. By contrast,
23 denying the motion would strip Petitioner of his constitutional right to federal
24 habeas review based solely on a clerical captioning error that has already been
25 cured.
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CONCLUSION

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2 Petitioner acted diligently by filing his Petition and Motion to Stay before
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4 the statutory deadline. The error in the caption was inadvertent and has been
5 corrected. The California Attorney has been previously served. Under *Mayle v.*
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7 *Felix, Ortiz-Sandoval* and Rule 15(c), this correction relates back to the timely
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9 November 11, 2025 filing.

10 For the foregoing reasons, Petitioner respectfully requests that the Court
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12 discharge the Order to Show Cause, accept the corrected service, and allow the
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14 Motion to Stay and Petition to proceed on the merits.
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16 Respectfully Submitted,

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18 Dated: 12/22/2025

/s/ John D. Kirby
John D. Kirby, Esq.
Attorney for Petitioner
Jonathon Montana