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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURTIS A. GIBBS,)	1:07-cv-01563-SKO-HC
)	
Petitioner,)	ORDER STRIKING PETITIONER'S
)	OBJECTIONS AND OPPOSITION
)	(Doc. 56)
v.)	
)	ORDER DENYING AS MOOT
J. E. THOMAS,)	PETITIONER'S REQUEST FOR LEAVE TO
)	FILE A NOTICE OF APPEAL (Doc. 56)
Respondent.)	
)	
)	

Petitioner is a federal prisoner who proceeded pro se with a habeas corpus action pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), the parties consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment. This Court dismissed in part and denied in part the habeas petition by order and judgment filed on November 18, 2010. (Docs. 54-55.)

Pending before the Court is a document filed by Petitioner on December 17, 2010, entitled "OBJECTION AND OPPOSITION TO" the Court's dispositive order. Petitioner filed the document without any request for permission to file an unauthorized pleading. In the objection and opposition, Petitioner restates his arguments

1 concerning the merits of the petition. (Doc. 56, 1-13.)

2 I. Striking Petitioner's Objections and Opposition

3 Fed. R. Civ. P. 12(f) provides as follows:

4 The Court may strike from a pleading an insufficient
5 defense or any redundant, immaterial, impertinent,
or scandalous matter. The court may act:

6 1) on its own; or

7 2) on motion made by a party either before
8 responding to the pleading or, if a response
is not allowed, within 21 days after being
9 served with the pleading.

10 A court may strike a document that does not conform to the formal
11 requirements of the pertinent rules of court. Transamerican
12 Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 143
13 F.R.D. 189, 191 (N.D. Ill. 1992).

14 The authorized pleadings in a habeas corpus proceeding are
15 the petition, the answer or any authorized motion filed in
16 response to the petition, and any reply thereto. Rules 1-5 of
17 the Rules Governing Section 2254 Cases in the United States
18 District Courts (Habeas Rules). Although objections to a
19 Magistrate Judge's findings and recommendations may be
20 appropriate in some instances, objections are not appropriate in
21 the present case because the parties had consented to the
22 jurisdiction of the Magistrate Judge to enter a final decision in
the action.

23 Here, the parties have already filed the appropriate
24 pleadings in this proceeding. The time for filing opposition or
25 other briefing on the merits of the petition has passed.
26 Petitioner has not sought, and the Court has not granted,
27 permission to file an unauthorized pleading.
28

1 Accordingly, it is ORDERED that Petitioner's unauthorized
2 objections and opposition (Doc. 56) be STRICKEN from the record.

3 II. Order Denying Request for Leave to File Notice of
4 Appeal

5 In the last sentence of his objection and opposition,
6 Petitioner renews his plea for a grant of habeas relief. (Obj.
7 at 14.) He then requests, "AND, IN NOT DOING SO, GRANT
8 PETITIONER LEAVE TO FILE NOTICE OF APPEAL." (Id.)

9 The present habeas corpus proceeding, undertaken pursuant to
10 28 U.S.C. § 2241(c)(3), is a civil proceeding. See, Browder v.
11 Director, Department of Corrections of Illinois, 434 U.S. 257,
12 269 (1978). In a civil proceeding, a notice of appeal must be
13 filed within thirty days after the entry of the pertinent
14 judgment, order, or decree. 28 U.S.C. § 2107(a); Fed. R. App. P.
15 4(a)(1)(A).

16 The time limit in civil proceedings is extended by 28 U.S.C.
17 § 2107(b) if the United States is a party:

18 In any such action, suit or proceeding in which
19 the United States or an officer or agency thereof
is a party, the time as to all parties shall be
sixty days from such entry.

20 28 U.S.C. § 2107(b). Fed. R. App. P. 4(a)(1)(B) likewise
21 provides:

22 When the United States or its officer or agency is
23 a party, the notice of appeal may be filed by any
24 party within 60 days after the judgment or order
appealed from is entered.

25 Fed. R. App. P. 4(a)(1)(B).

26 These provisions govern in civil actions involving
27 grievances arising out of a governmental activity against
28 officers of the United States where the officers 1) acted under

1 color of office or color of law or lawful authority, or 2) any
2 party in the case is represented by a government attorney.
3 Wallace v. Chappell, 637 F.2d 1345, 1348 (9th Cir. 1981)
4 (applying Rule 4(a)(1)(B) in a suit against officers in their
5 official and individual capacities brought by enlisted naval
6 personnel pursuant to 42 U.S.C. § 1985 for racial
7 discrimination). Further, it is established that Fed. R. App. P.
8 4(a) is applicable to habeas corpus proceedings. Browder v.
9 Director, Department of Corrections of Illinois, 434 U.S. 257,
10 265 n.9 (1978); Pettibone v. Cupp, 666 F.2d 333, 334 (9th Cir.
11 1981). It has been recognized that the time for a petitioner to
12 file a notice of appeal from a district court's denial of a
13 petition brought pursuant to § 2241 to challenge the execution of
14 a sentence is the sixty-day period provided for by Fed. R. App.
15 P. 4(a)(1)(B). United States v. Little, 392 F.3d 671, 680 (4th
16 Cir. 2004).

17 Here, the named Respondent is the warden of a United States
18 penitentiary who in all pertinent respects was acting in his
19 official capacity and under color of law and authority; further,
20 review of the docket shows that the Respondent was represented by
21 the Bureau of Prisons Regional Counsel and the United States
22 Attorney's Office throughout the action. Petitioner proceeded
23 pursuant to § 2241. Thus, the deadline for filing a notice of
24 appeal would be sixty days after the entry of judgment.

25 Judgment was entered on November 18, 2010. Accordingly, the
26 sixty-day period for filing a notice of appeal has not yet run.
27 Petitioner may file a notice of appeal during such period without
28

1 leave of Court.¹

2 Accordingly, Petitioner's request for leave to file a notice
3 of appeal is DENIED as moot.

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5 IT IS SO ORDERED.

6 **Dated: January 4, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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26 ¹A certificate of appealability is not required to appeal the denial of
27 a petition under § 2241. Forde v. United States Parole Commission, 114 F.3d
28 878, 879 (9th Cir. 1997). This is because the plain language of § 2253(c)(1)
does not require a certificate with respect to an order that is not a final
order in a habeas proceeding in which the detention complained of arises out
of process issued by a state court. Id.