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7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT CENTRAL DIVISION

9 John Henry Yablonsky,
10 Petitioner,

EDCV 14-01877-PA(DTB)

11 Vs.

APPLICATION FOR LEAVE TO
FILE REPLY, MEMORANDUM OF
POINTS AND AUTHORITIES IN
EXCESS OF 30 PAGES

12 Scott Fraeunheim (warden),
13 Respondent,

The Honorable Magistrate D. Bristow
Filed: September 4, 2014

14
15 Petitioner comes with good cause, praying
16 this court allow a reply in excess of 30 pages for the following
17 fair and reasonable showing. Petitioner has brought 42 grounds
18 of error to petitioners rights in habeas corpus. The respondent
19 has filed an answer of 160 pages, in excess of 135 pages over
20 the limit. Respondent does not address the core of the arguments
21 and brings misstatements of facts and erroneous applications
22 of standards. Respondents repeated expansions of the arguments
23 creates a difficult ability to properly address each answer without
24 being forced into addressing each enlargement properly without
25 being subjected to some type of forfeiture by the petitioner.

26 Enacted in 1966 Amendment to 28 U.S.C. § 2254 congress specified
27 the absence of [factors] enumerated in 2254(d)(1-8) the burden
shall rest on the petitioner.....to establish "by convincing facts

Enlargement 1

1 evidence that the factual determination of state court's was
2 erroneous".....[W]e now hold that habeas corpus court should
3 conclude in it's opinion of granting the writ the response reasoning
4 which present lead to conclude that any of the eight factors was
5 present. Purkett v. Elem, 514 U.S. 765, 769 (1995).

6 If a factual dispute arises, in that event the petitioner
7 may respond to state pleadings by asking the court to authorize
8 proceedings to resolve the [factual] dispute. Such as discovery,
9 employ of experts, expansion of the record, or an evidentiary hearing
10 or refer to magistrate accompanying the motions for [leave] to conduct
11 finding procedures should either be in [reply] (If the state has
12 made the argument in it's [answer]). Blackledge v. Allison, 431 U.S.
13 637, 776 (1977) (Quoting Pennsylvania Ex. Rel. Herman v. Claudy, 350 U.S.
14 116, 119 (1956) (Federal Habeas Corpus Practice and Procedure Section
15 §16.2(c)) If the state disputes the legal merits of the claim, the
16 petitioner first should examine the respondent's argument for
17 implicit factual assumptions that are [UNTRUE OR IN DISPUTE] and
18 that a request of the factual assumptions are reviewed by fact-
19 finding procedures and discussed.

20 Generally the court may find it efficient to allow
21 the fact-finding process to proceed simultaneously with respect
22 to petitioner's claim and state defense. Smith v. Wainwright, 741
23 F.2d 1249, 1256 (11th Cir. 1984).

24 Here the respondent not only disagrees with the petitioner,
25 but goes as far as to ignore the ground and it's merit all together
26 or discusses another factual basis for the error being brought
27 in that specific ground (expansions of the record)

Enlargement 2

1 and either forces the petitioner to address the improper basis
2 of the respondents answer at that point, or present the facts that
3 directly apply to that specific arguement, without risking forfeiture
4 of the petitioners further rights. Respondent then relies on intentiona
5 mistatements of the record, facts, and or applies the incorrect
6 standard for federal and Supreme Court scrutiny, or blatantly does
7 not apply them correctly as described in sec. §16.2(c) of the
8 procedural manual. Respondent had brought 160 pages addressing AS THE
9 states opposition. There are 42 errors of the petitioners rights
10 Guaranteed in The United States Constitution, and respondent
11 had addressed them improperly. For the reasons described above,
12 petitioner begs this court to accept the reply to expansion in
13 excess of the 30 page limit ordered by the court. It is virtually
14 impossible to address the answer brought in the 30 page limit without
15 forfeiting the petitioners right, allowing the respondent to bring
16 improper facts, legal merit, as he expands the records with
17 incorrect matter. Petitioner prays this court allow the petitioner
18 to bring this reply in excess of the 30 page limit.

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Respectfully;

Date _____

John Henry Yablonsky

Enlargement 3

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT, CENTRAL DIVISION

John Henry Yablonsky,
Petitioner,

EDCV 14-01877-PA(DTB)

Vs.

[PROPOSED] ORDER

Scott Fraeunheim(warden),
Respondent,

Petitioners request for enlargement of reply is
granted, and so ordered.

Date _____

The Honorable Magistrate

